



May 5, 2023

Via E-Mail: [growthplanning@ontario.ca](mailto:growthplanning@ontario.ca)  
[planningconsultation@ontario.ca](mailto:planningconsultation@ontario.ca)

Minister of Municipal Affairs & Housing  
777 Bay Street, 17th Floor  
Toronto, ON M5G 2E5

sleisk@cassels.com  
tel: +1 416 869 5411  
fax: +1 416 640 3218  
file # 35977-19

Attention: The Honourable Steve Clark, MPP

Dear Minister:

**Re: Brookfield Properties**  
**Bill 97 – Helping Homebuyers, Protecting Tenants Act, 2023**  
**New Provincial Planning Statement**  
**ERO Numbers: 019-6821 and 019-6813**

We are the solicitors for Brookfield Properties (“Brookfield”), the owner of significant land holdings in the City of Peterborough and Township of Cavan Monaghan, within the County of Peterborough.

We are writing to provide our comments to the Minister regarding the proposed *Planning Act* amendments through Bill 97, *Helping Homebuyers, Protecting Tenants Act, 2023* (“Bill 97”) and the new Provincial Planning Statement (“2023 PPS”), both of which form part of the Province’s Housing Supply Action Plan. Brookfield has reviewed Bill 97 and the 2023 PPS and is generally supportive of the proposed changes, particularly given that the amendments are intended to achieve the construction of 1.5 million new homes by 2031.

Brookfield supports the proposed 2023 PPS which provide municipalities with greater flexibility in considering new settlement areas and settlement area boundary expansions, creating additional opportunity to deliver more housing faster. However, realization of the 2023 PPS is negatively impacted by the lack of implementing amendments to the *Planning Act*, which continues to limit the ability of applicants to appeal refusals or non-decisions of applications to add or expand settlement areas. Currently, the only way these policies in the 2023 PPS can be realized is if they are municipally initiated, which appears to be contrary to the purpose and intent of the 2023 PPS and provincial statements regarding same.

For the reasons that follow, we are writing to request that Bill 97 be revised to eliminate the provisions of the *Planning Act* which prohibit such appeals. In addition, we are writing to request that the definition of “settlement areas” in the 2023 PPS be revised to recognize existing built-up areas, regardless of whether they have been identified for development in official plans.

Proposed amendments to Bill 97 and the 2023 PPS are enclosed for the Minister's consideration.

## **Brief History of Brookfield Peterborough Development**

Commencing in 2008, Brookfield and its partners began investing in lands in the City of Peterborough and adjacent Township of Cavan Monaghan, within an area designated by the Town as Special Study Area No. 1 ("SSA-1"), an area identified for future development adjacent to the City of Peterborough. Over the course of several years, detailed expert reports and studies were undertaken in consultation with the Township for the future development of substantial land holdings, with applications for official plan amendments, zoning by-law amendments and plans of subdivision ultimately prepared and submitted.

Despite the foregoing, in 2012, the Township of Cavan Monaghan endorsed a new Official Plan (the "2012 OP") proposing to remove SSA-1 and all future development potential of these lands, which was appealed to the Ontario Municipal Board, as it then was (the "OMB") (PL130788) (the "Appeal"). In partial resolution of the Appeal, Brookfield, the Township, the County, and the City entered into binding Minutes of Settlement which were admitted into evidence at a settlement hearing of the Appeal (the "Joint Minutes of Settlement").

The Joint Minutes of Settlement, adopted by the OMB, set out modifications to the 2012 OP which require prioritization of SSA-1 in any municipal boundary expansion in the Township. The Joint Minutes of Settlement also contemplated a site-specific amendment to the County OP (the "Crestwood Application") to recognize the existing settlement area of Crestwood. Crestwood is an existing community on the boundary with the City of Peterborough containing residential subdivisions, an elementary school and a high school, despite no longer being identified within an official plan. On June 23, 2015, Brookfield submitted an application to the County to recognize Crestwood as a settlement area. On December 2, 2015, County Council deferred consideration of the Crestwood Application until the County completed its Municipal Comprehensive Review ("MCR").

Despite the foregoing, in support of the County's MCR, the County undertook a Growth Analysis prepared by Hemson Consulting Inc. and the Township undertook a Growth Management Strategy prepared by Watson & Associates Economists Ltd. Both exercises failed to consider the Crestwood Application. Despite numerous objections raised with the Township and County, it appears that the parties have reached an impasse. No decision on the Crestwood Application has occurred to date, to which there is no appeal under the *Planning Act*.

Brookfield's proposed amendments to Bill 97 and the 2023 PPS, detailed further below, would advance potential development of its lands, which remain an appropriate area for development

of a complete community, including addressing the City of Peterborough's stated need for employment lands.

## **Proposed Bill 97 Amendments**

Brookfield supports the amendments in the 2023 PPS which propose to eliminate the concept of municipal comprehensive reviews and allowing municipalities to consider the creation of new settlement areas and settlement area expansions where appropriate. Brookfield is also supportive of the Province's proposed 2023 PPS policies which do not limit the ability of landowners to apply for new or expanded settlement areas where appropriate. These changes, amongst others, will result in more land being available where it is needed for housing and will assist the Province in implementing its Housing Supply Action Plan.

However, the *Planning Act* continues to limit the ability to appeal refusals or non-decisions of applications for new settlement areas or settlement boundary expansions. In our view, this cannot be the Province's intention given its ultimate objective. Accordingly, on behalf of Brookfield, we are writing to request that Bill 97 be revised to eliminate the provisions of the *Planning Act* which prohibit such appeals.

We should also note that the *Planning Act* continues to restrict appeals of Minister's decisions with respect to official plan conformity exercises, which may also impact the ability to appeal municipally initiated official plan amendments regarding settlement areas that are adopted as amendments under Section 26 of the *Planning Act*.

## **Proposed 2023 PPS Amendments**

While Brookfield is supportive of the 2023 PPS, the definition of "settlement area" continues to exclude existing settlement areas, such as Crestwood, which municipalities have deliberately failed to identify in official plans. Recognizing existing built-up areas where development is concentrated as "settlement areas" would obviate the need for boundary expansion applications in some instances, and would increase the residential land supply in the Province. On behalf of Brookfield, we are writing to request that the definition of "settlement areas" in the 2023 PPS be revised to recognize existing built-up areas that may not be designated for development in official plans. We also request that similar amendments be made to the definition of "area of settlement" in the *Planning Act* to ensure that the terms are consistent.

Please provide notice to the undersigned of all Ministerial decisions with respect to this matter.

We are grateful for the opportunity to provide you with our comments. Please do not hesitate to contact us with any questions or concerns.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to read "Signe Leisk", with a stylized flourish at the end.

Signe Leisk  
SL/MK  
Encl.

## SCHEDULE 6 PLANNING ACT

**1 (1) The definition of “area of employment” in subsection 1 (1) of the *Planning Act* is repealed and the following substituted:**

“area of employment” means an area of land designated in an official plan for clusters of business and economic uses, those being uses that meet the following criteria:

1. The uses consist of business and economic uses, other than uses referred to in paragraph 2, including any of the following:
  - i. Manufacturing uses.
  - ii. Uses related to research and development in connection with manufacturing anything.
  - iii. Warehousing uses, including uses related to the movement of goods.
  - iv. Retail uses and office uses that are associated with uses mentioned in subparagraphs i to iii.
  - v. Facilities that are ancillary to the uses mentioned in subparagraphs i to iv.
  - vi. Any other prescribed business and economic uses.
2. The uses are not any of the following uses:
  - i. Institutional uses.
  - ii. Commercial uses, including retail and office uses not referred to in subparagraph 1 iv; (“zone d’emploi”)

**(2) Section 1 of the Act is amended by adding the following subsection:**

### **Area of employment**

(1.1) An area of land designated in an official plan for clusters of business and economic uses is an “area of employment” for the purposes of this Act even if the area of land includes one or more parcels of land whose use is excluded from being a business and economic use under paragraph 2 of the definition of “area of employment” in subsection (1) provided that the following conditions are satisfied:

1. The parcels of land in question are subject to official plan policies authorizing the continuation of the use.
2. The use was lawfully established on the parcel of land before the day subsection 1 (1) of Schedule 6 to the *Helping Homebuyers, Protecting Tenants Act, 2023* came into force.

**(3) Subsection 1 (2) of the Act is amended by striking out “38 (4.1)” and substituting “38 (4)”.**

**(4) Paragraph 1 of subsection 1 (4.1) of the Act is amended by striking out “Paragraph 1.1” and substituting “Paragraph 1”.**

**(5) Paragraph 2 of subsection 1 (4.1) of the Act is amended by striking out by “Paragraph 1.1” and substituting “Paragraph 1”.**

**(6) Paragraph 5 of subsection 1 (4.1) of the Act is amended by striking out “Paragraph 2.1” and substituting “Paragraph 2”.**

**(7) Paragraph 7 of subsection 1 (4.1) of the Act is amended by striking out “38 (4.1)” and substituting “38 (4)”.**

**(8) Paragraph 1 of subsection 1 (4.3) of the Act is amended by striking out “Paragraphs 1.1 and 4” and substituting “Paragraphs 1 and 4”.**

**(9) Paragraph 2 of subsection 1 (4.3) of the Act is amended by striking out “Paragraphs 1.1 and 3” and substituting “Paragraphs 1 and 3”.**

**(10) Paragraph 5 of subsection 1 (4.3) of the Act is amended by striking out “Paragraph 2.1” and substituting “Paragraph 2”.**

**(11) Paragraph 7 of subsection 1 (4.3) of the Act is amended by striking out “38 (4.1)” and substituting “38 (4)”.**

**(12) Subsection 1 (5) of the Act is repealed.**

**2 (1) Clause 3 (5) (a) of the Act is amended by adding “subject to a regulation made under subsection (6.1),” at the beginning.**

**(2) Clause 3 (6) (a) of the Act is amended by adding “subject to a regulation made under subsection (6.1),” at the beginning.**

**(3) Section 3 of the Act is amended by adding the following subsections:**

**Minister’s regulations re transition**

(6.1) The Minister may make regulations providing for transitional matters which, in the opinion of the Minister, are necessary or desirable to facilitate the implementation of a policy statement issued under subsection (1), other than a policy statement deemed under subsection (8) to be a policy statement issued under subsection (1).

**Same**

(6.2) Without limiting the generality of subsection (6.1), a regulation under that subsection may,

- (a) provide for transitional matters respecting matters, applications and proceedings that were commenced before or after a policy statement comes into effect;
- (b) provide that the policy statement being implemented does not apply, in whole or in part, to specified matters, applications and proceedings or providing that a previous policy statement continues to apply, in whole or in part, to the specified matters, applications and proceedings;
- (c) deem a matter, application or proceeding to have been commenced on the date or in the circumstances described in the regulations.

**3 Subsection 16 (3.1) of the Act is amended by adding “other than the primary residential unit” at the end.**

**4 (1) Clause 17 (24.1) (c) of the Act is amended by striking out “parcel of urban residential land” and substituting “parcel of land”.**

**(2) Clause 17 (36.1) (c) of the Act is amended by striking out “parcel of urban residential land” and substituting “parcel of land”.**

**5 (1) Clauses 22 (7.2) (a) and (b) are repealed.**

**5(2) Subclause 22 (7.2) (c) (iii) of the Act is amended by striking out “parcel of urban residential land” and substituting “parcel of land”.**

**6 (1) Subsection 34 (10.12) of the Act is amended by striking out the portion before paragraph 1 and substituting the following:**

**Refund of fee**

(10.12) With respect to an application received on or after July 1, 2023, with the exception of an application referred to in subsection (10.14), the municipality shall refund any fees paid pursuant to section 69 in respect of the application in accordance with the following rules:

**(2) Section 34 of the Act is amended by adding the following subsections:**

**No refunds, applications received before July 1, 2023**

(10.13) Any refund of fees required under subsection (10.12), as it read before the day subsection 6 (1) of Schedule 6 to the *Helping Homebuyers, Protecting Tenants Act, 2023* came into force, with respect to applications received before July 1, 2023 shall be deemed never to have been required.

**Exception**

(10.14) Subsection (10.12) does not apply with respect to an application if the land to which the application relates is located in a municipality that, on the day on which the application is received by the municipality, is prescribed for the purposes of this subsection.

**(3) Subsection 34 (11.0.4) is repealed.**

**(34) Clause 34 (19.1) (c) of the Act is amended by striking out “parcel of urban residential land” and substituting “parcel of land”.**

**7 Subsection 35.1 (1.1) of the Act is amended by striking out “of this section” at the end and substituting “other than the primary residential unit”.**

**8 (1) Subsection 38 (3) of the Act is amended by striking out “thirty” and substituting “20”.**

**(2) Subsection 38 (4) of the Act is repealed and the following substituted:**

**Appeal to Tribunal re by-law passed under subs. (1) and (2)**

(4) Any person or public body who was given notice of the passing of a by-law under subsection (3) may, within 50 days after the date of the passing of the by-law, appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

**(3) Subsection 38 (4.1) of the Act is repealed and the following substituted:**

**Transition**

(4.1) This section, as it read immediately before the day the *Helping Homebuyers, Protecting Tenants Act, 2023* received Royal Assent, continues to apply to a by-law under subsection (1) or (2) passed before that day.

**(4) Subsection 38 (5) of the Act is amended by striking out “or (4.1)”.**

**9 (1) Subsection 41 (1.2) of the Act is amended by striking out “residential units” at the end and substituting “residential units, unless the parcel of land includes any land in a prescribed area”.**

**(2) Subsection 41 (11.1) of the Act is amended by striking out the portion before paragraph 1 and substituting the following:**

**Refund**

(11.1) With respect to plans and drawings referred to in subsection (4) that are received on or after July 1, 2023, with the exception of plans and drawings referred to in subsection (11.3), the municipality shall refund any fees paid pursuant to section 69 in respect of the plans and drawings in accordance with the following rules: .....

**(3) Section 41 of the Act is amended by adding the following subsections:**

**No refunds, plans and drawings received before July 1, 2023**

(11.2) Any refund of fees required under subsection (11.1), as it read before the day subsection 9 (2) of Schedule 6 to the *Helping Homebuyers, Protecting Tenants Act, 2023* came into force, with respect to plans and drawings received before July 1, 2023 shall be deemed never to have been required.

**Exception**

(11.3) Subsection (11.1) does not apply with respect to plans and drawings submitted to a municipality that, on the day that the plans and drawings are received by the municipality, is prescribed for the purposes of this subsection.

**(4) Subsection 41 (12) of the Act is amended by striking out “submitted to the municipality” and substituting “received by the municipality”.**

**(5) Subsection 41 (12.0.2) of the Act is amended by adding the following paragraph:**

3.1 Any information or material required under subsections (3.3) and (3.4).

**10 Clause 42 (1.3) (c) of the Act is amended by striking out “parcel of urban residential land” and substituting “parcel of land”.**

**11 Section 47 of the Act is amended by adding the following subsection:**

**Non-application of policy statements, etc.**

(4.0.1) The Minister may, in an order made under clause (1) (a), provide that policy statements issued under subsection 3 (1), provincial plans and official plans do not apply in respect of a licence, permit, approval, permission or other matter required before a use permitted by the order may be established.

**12 The Act is amended by adding the following section:**

**Minister’s order re agreements**

**49.2 (1)** If the Minister has directed the Provincial Land and Development Facilitator or a Deputy Facilitator appointed under subsection 12 (2) of the *Ministry of Municipal Affairs and Housing Act* to advise, make recommendations or perform any other functions with respect to land, the Minister may, by order, require the owner of the land to enter into one or more agreements with the Minister or with a municipality addressing any matters that the Minister considers necessary for the appropriate development of the land.

**Notice to municipality**

(2) If the Minister requires the owner of the land to enter into an agreement with a municipality, the Minister shall inform the municipality in writing of the matters that the agreement must address.

**Restrictions on use of land**

(3) Until the owner has entered into all agreements required by the order, no person shall, except as permitted by the order,

(a) use the land other than for a purpose for which the land was lawfully used on the day the order was made;



- (b) erect or locate any building or structure on the land, other than a building or structure for which a permit has been issued under section 8 of the *Building Code Act, 1992* on or before the day the order was made and has not been revoked under subsection 8 (10) of that Act;
- (c) use any buildings or structures on the land not referred to in clause (b) other than for a purpose for which the building or structure was lawfully used on the day the order was made; or
- (d) place or dump fill on the land, remove topsoil from the land, alter the grade of the land or destroy or injure trees on the land except if failing to do so would result in,
  - (i) danger to the health or safety of any person,
  - (ii) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it, or
  - (iii) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

#### **Effect of order**

(4) An agreement required under subsection (1) may require the owner of the land to provide anything or pay for anything in excess of what the owner is required to provide or pay for under this Act, the *Development Charges Act, 1997* or any other Act.

#### **Same**

(5) An agreement required under subsection (1) may be registered against the land to which it applies and the Minister or the municipality, as the case may be, is entitled to enforce the provisions of that agreement against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, against any subsequent owners.

#### **Non-application of *Legislation Act, 2006*, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1).

#### **Commencement**

**13 (1) Except as otherwise provided in this section, this Schedule comes into force on the day the *Helping Homebuyers, Protecting Tenants Act, 2023* receives Royal Assent.**

(2) Subsections 1 (1), (2) and (12), [5 \(1\) and 6 \(3\)](#) come into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Subsections 1 (8) to (11) come into force on the later of the day the *Helping Homebuyers, Protecting Tenants Act, 2023* receives Royal Assent and the day subsection 1 (5) of Schedule 9 to the *More Homes Built Faster Act, 2022* comes into force.



# **PROPOSED PROVINCIAL PLANNING STATEMENT**

April 6, 2023

Environmental Registry of Ontario Posting # 019-6813

for future *rail facilities*.

**Redevelopment:** means the creation of new units, uses or lots on previously developed land in existing communities, including *brownfield sites*.

**Regional market area:** refers to an area that has a high degree of social and economic interaction. The upper or single-tier municipality, or planning area, will normally serve as the *regional market area*. However, where a *regional market area* extends significantly beyond these boundaries, then the *regional market area* may be based on the larger market area. Where *regional market areas* are very large and sparsely populated, a smaller area, if defined in an official plan, may be utilized.

**Renewable energy source:** means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy and tidal forces.

**Renewable energy system:** means a system that generates electricity, heat and/or cooling from a *renewable energy source*.

**Reserve sewage system capacity:** means design or planned capacity in a waste water treatment facility, within *municipal sewage services* or *private communal sewage services*, which is not yet committed to existing or approved development. For lot creation using *private communal sewage services* and *individual on-site sewage services*, *reserve sewage system capacity* includes approved capacity to treat and land-apply, treat and dispose of, or dispose of, hauled sewage in accordance with applicable legislation but not by land-applying untreated, hauled sewage. Treatment of hauled sewage can include, for example, a sewage treatment plant, anaerobic digestion, composting or other waste processing.

**Reserve water system capacity:** means design or planned capacity in a water treatment facility which is not yet committed to existing or approved development. *Reserve water system capacity* applies to *municipal water*

*services* or *private communal water services*, and not *individual on-site water services*.

**Residence surplus to an agricultural operation:** means an existing habitable farm residence that is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation).

**River, stream and small inland lake systems:** means all watercourses, rivers, streams, and small inland lakes or waterbodies that have a measurable or predictable response to a single runoff event.

**Rural areas:** means a system of lands within municipalities that may include rural *settlement areas*, *rural lands*, *prime agricultural areas*, natural heritage features and areas, and resource areas.

**Rural lands:** means lands which are located outside *settlement areas* and which are outside *prime agricultural areas*.

**Sensitive:** in regard to *surface water features* and *ground water features*, means features that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.

**Sensitive land uses:** means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more *adverse effects* from contaminant discharges generated by a nearby major facility. *Sensitive land uses* may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.

**Settlement areas:** means urban areas and rural settlement areas within municipalities (such as cities, towns, villages and hamlets). Ontario's settlement areas vary significantly in terms of size, density, population, economic activity, diversity and intensity of land uses, service levels, and types of infrastructure available.

Settlement areas are:

- a) built-up areas where development is

concentrated and which have a mix of land uses; **and or**

- b) lands which have been designated in an official plan for development over the long term.

**Sewage and water services:** includes *municipal sewage services* and *municipal water services*, *private communal sewage services* and *private communal water services*, *individual on-site sewage services* and *individual on-site water services*, and *partial services*.

**Significant:** means in regard to mineral potential, an area identified as provincially significant through provincial guidance, such as the Provincially Significant Mineral Potential Index.

Criteria for determining significance is provided in provincial guidance, but municipal approaches that achieve or exceed the same objective may also be used.

While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.

**Site alteration:** means activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.

**Special Policy Area:** means an area within a community that has historically existed in the *flood plain* and where site-specific policies, approved by both the Ministers of Natural Resources and Forestry and Municipal Affairs and Housing, are intended to provide for the continued viability of existing uses (which are generally on a small scale) and address the significant social and economic hardships to the community that would result from strict adherence to provincial policies concerning *development*. The criteria for designation and procedures for approval are established by the Province.

A *Special Policy Area* is not intended to allow for new or intensified *development* and *site alteration*, if a community has feasible opportunities for *development* outside the *flood plain*.

**Specialty crop area:** means areas within the agricultural land base designated based on provincial guidance. In these areas, specialty crops are predominantly grown such as tender fruits (peaches, cherries, plums), grapes, other fruit crops, vegetable crops, greenhouse crops, and crops from agriculturally developed organic soil, usually resulting from:

- a) soils that have suitability to produce specialty crops, or lands that are subject to special climatic conditions, or a combination of both;
- b) farmers skilled in the production of specialty crops; and
- c) a long-term investment of capital in areas such as crops, drainage, infrastructure and related facilities and services to produce, store, or process specialty crops.

**Strategic growth areas:** means within *settlement areas*, nodes, corridors, and other areas that have been identified by municipalities to be the focus for accommodating *intensification* and higher-density mixed uses in a more *compact built form*.

Strategic growth areas include *major transit station areas*, *urban growth centres* and other areas where growth or development will be focused, that may include infill, *redevelopment*, *brownfield sites*, the expansion or conversion of existing buildings, or greyfields. Lands along major roads, arterials, or other areas with existing or planned *frequent transit* service or *higher order transit* corridors may also be identified as *strategic growth areas*.

**Surface water feature:** means water-related features on the earth's surface, including headwaters, rivers, permanent and intermittent streams, inland lakes, seepage areas, recharge/discharge areas, springs, wetlands, and associated riparian lands that can be defined by their soil moisture, soil type, vegetation or topographic characteristics.

**Transit service integration:** means the coordinated planning or operation of transit service between two or more agencies or services that contributes to the goal of seamless service for riders and could include considerations of service schedules, service