

Fixing long-term care & land use planning: What does More Homes for Everyone mean for long-term care?

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Background

The [*Fixing Long-Term Care Act, 2021*](#) (the FLTCA) was proclaimed into force on April 11, 2022. The FLTCA brought with it incremental changes to the previous *Long-Term Care Homes Act, 2007*, and paved the way for improved operation of long-term care homes. BLG has recently published a series of articles outlining [What you need to know about the FLTCA](#), [impacts on long-term care employers](#), and [implications for long-term care licensees under the new FLTCA regulation](#).

The FLTCA was introduced following the [final report](#) of Ontario's Long-Term Care COVID-19 Commission (the Commission) in April 30, 2021, which recommended changes to licensing, operations, and the development of new long-term care facilities. In our [overview article](#), we question how attractive the public-private development model recommended by the Commission may be for privately owned property, where other types of real estate development, such as residential condominiums, could maximize land values. We suggested that incentives would likely be required to encourage the development of new long-term care homes on private lands in order to incorporate such land use as part of a larger mixed-use development.

Following on the heels of the Feb. 8, 2022 [Report of the Ontario Housing Affordability Task Force](#), the Province introduced Bill 109, the [More Homes for Everyone Act, 2022](#) (*More Homes for Everyone Act*). The legislature quickly carried the bill, which received Royal Assent on April 14, 2022. As enacted, it amends the [Planning Act](#), [City of Toronto Act, 2006](#), and [Development Charges Act, 1997](#) (DCA), among other statutes, in an effort to facilitate planning approvals for new housing supply generally, in less time.

This insight explores some of the new *More Homes for Everyone Act* planning tools, and how they could incentivize more long-term care development approvals to support the Province's goal of fixing long-term care.

The planning approvals timeline

When [tabling](#) the *More Homes for Everyone Act*, Minister Clark stated that it takes an average of eight years to build a long-term care home in Ontario.

One time-consuming part of that process is securing planning approvals: this includes obtaining permissions for the use pursuant to the municipality's official plan and zoning by-law as applicable, preparing a comprehensive site plan application package, and applying for and obtaining site plan approval from the municipality.

The time required for a developer to secure the planning approvals for a new long-term care home is comparable to, if not longer than, the time to obtain planning approvals for more profitable types of residential development. The City of Toronto's [application page](#) indicates that that timeline typically ranges from four to nine months, for routine and complex applications, respectively. In practice, however, the timeline is usually longer. At the time of the Auditor General's December 2021 [Value-for-Money Audit: Land-use Planning in the Greater Golden Horseshoe \(the Audit\)](#), the timeline ranged from six to nine months for routine applications to one to two years for complex applications. An application that also requires an amendment to the official plan and/or zoning by-law to permit the desired use on the property would be more complex and would be at the upper end of the time range, if not longer. Recent legislative changes and pandemic-related backlogs have added to the time required.

A dispute between the applicant, municipality or other stakeholders during the planning approvals process adds more time to the process.

Existing ways to accelerate planning approvals

Prior to the *More Homes for Everyone Act*, long-term care developers had limited options to fast-track the planning approval process.

One option is to seek a Minister's Zoning Order under Section 47 of the *Planning Act* (MZO). This tool has long been available to achieve quicker approvals and has been utilized [more frequently since 2020](#). MZOs require Provincial involvement, and often involve buy-in from the local municipality.

Another option for rebooting stagnating planning applications is to appeal the municipality's failure to make a decision on certain approvals under the *Planning Act*, but this inevitably adds more time to an already lengthy process: according to the Audit, obtaining approvals through Tribunal appeals is known to take twice as long on average.

The only way to recoup application fees has been to bring an appeal for a refund of application fees under Section 69 of the *Planning Act* based on the reasonableness of fees.

A recent option used for fast-tracking long-term care approvals is the [Accelerated Build Pilot Program](#). Unveiled on July 15, 2020, the aim was to accelerate long-term care home build-outs in the GTA during the pandemic. The Pilot Program has been successful, but it only applies to a few priority projects. For the majority of private long-term care builds, challenges have remained for developers and municipalities alike to

increase long-term care home supply, including in particular the time required to obtain approvals for a less lucrative land use.

Three new fast-tracking tools and incentives

The new *More Homes for Everyone Act* introduces the following tools and incentives in an effort to accelerate the planning approval timeline for new homes, including long-term care homes:

1. a new community infrastructure & housing accelerator tool,
2. required delegation of site plan application decisions to municipal staff, and
3. financial consequences for overdue decisions.

New Community Infrastructure & Housing Accelerator (CIHA)

The new CIHA tool is intended to supplement MZOs, which, as the [Minister stated](#) when tabling the bill, would now be reserved for Provincially significant infrastructure projects. The CIHA requires a municipal council to provide public notice and make a resolution identifying the lands to be regulated and how the municipality's powers will be exercised. Once invoked, a CIHA order allows the Province to grant approvals and permit or regulate the use, height, size, and spacing of buildings. In addition, according to the [draft CIHA guideline](#), the Province can exempt a priority development from conforming or not conflicting with Provincial or municipal plans or policies, if requested by the municipality. The Province could also impose conditions on the municipality or the developer, akin to site plan controls. CIHA orders can be sought for publicly or privately-owned lands, but are restricted from applying to lands within the Greenbelt Area.

The list of priority developments that would be targeted by the tool are broad: community infrastructure supporting quality of life, any type of housing, buildings that would facilitate employment and economic development, and mixed-use developments. [The debates](#) and the [draft CIHA guideline](#) specifically identify long-term care homes as a type of "priority development" that is intended to be expedited by the CIHA.

Final guidelines from the Province have yet to be published and are required before landowners can begin requesting that municipalities consider their lands for the CIHA. Based on the [draft CIHA guideline](#), it appears that seeking a CIHA resolution from Council will be similar to how MZOs are currently requested, which is informal and varies by municipality, but typically begins by consulting planning staff.¹

The CIHA appears to be the most promising change for increasing the supply of long-term care homes. As observed in the Audit, MZOs have been a [popular tool for long-term care developments](#); the CIHA could continue or expand that trend. Based on the *More Homes for Everyone Act* and the draft guideline, an order granted pursuant to the CIHA is intended to be more transparent than the MZO, however, this will depend on the final guidelines and how municipalities use this new planning tool in facilitating development approvals. Some critics are concerned that this mechanism could be used to evade the checks and balances of approvals sought pursuant to the *Planning Act* process, as may be the case for some MZOs.

Required delegation of site plan control

The *More Homes for Everyone Act* introduced a requirement to delegate site plan control decisions to municipal staff as of July 1, 2022.² The expectation is that the required delegation will facilitate faster site plan approvals for all types of uses, including institutional uses like long-term care homes.

From a practical perspective, municipal councils typically meet only every two weeks or once a month. Although seasoned Councillors may be well-versed with official plan or zoning applications, many do not have time to review site plan applications in the same level of detail as technical experts or planning staff. In contrast, planning staff often work on detailed development applications, are generally familiar with applications from the pre-consultation stage through to clearing conditions of approval, and work closely with technical consultants to review site plan applications.

Another reason for delegation is to “[depoliticize](#)” routine decisions, particularly when the higher-order planning approvals have already been granted either by Council or by the Ontario Land Tribunal. Detractors are concerned that by taking the decision away from the elected Council, there will be insufficient opportunity for public input and consultation.

Financial consequences for delays

Beginning Jan. 1, 2023, municipalities are required to refund a developer’s planning application fees (on a graduated scale) if a decision is not made on a zoning by-law or site plan application within the legislated periods.

Even if fully refunded, the purpose of this change is to incentivize faster approvals and balance out the cost of long approval wait times, which are similar for residential and institutional developments. These financial consequences do not make long-term care developments more attractive to developers, since land values are still more likely to be optimized through residential developments like condominiums.

Further, staff shortages, coupled with the new financial consequences, could push municipalities to issue rushed approvals or refusals to avoid having to refund application fees. Rushed decisions or quick refusals could increase the likelihood of appeals to the Tribunal; critics suggest that, rather than saving time, this initiative will simply shift the decision over to the already busy Ontario Land Tribunal.

Timing is only one piece of the puzzle

It remains to be seen whether the *More Homes for Everyone Act*’s new timing incentives will be enough to make long-term care development more attractive to private landowners and the development community.

Beyond securing planning approvals, there are additional steps required before a new long-term care development is operational, including paying development levies, posting securities, applying for and securing building permit(s), constructing the building, and applying for and securing an long-term care operating license. These time-consuming hurdles are unchanged by the *More Homes for Everyone Act*. However, the

Province [has entered an agreement](#) to harmonize the Building Code with other provinces, and has begun addressing the operator license challenges with the new regulation under the FLTCA (for more on licensing, [see our article](#)). The [Commission recommended](#) separating the construction of long-term care homes from their operation, which would help by splitting the time burden of these important processes without taking shortcuts that could compromise building or resident safety.

Even if these new initiatives lead to faster approvals (and fewer appeals), financial challenges remain for developers and municipalities in building more long-term care homes that cannot be addressed by faster approvals or application fee refunds alone. This is particularly true in city centres where traditional residential uses are the most cost-effective developments based on high land values. The Province may need to introduce more economic provisions such as more funding for the capital cost of development or greater exemptions from development levies to truly incentivize long-term care development by private developers.

For more information on *Fixing Long-Term Care Act, 2021* and land use planning and what “More Homes for Everyone” means for long-term care developments, reach out to one of the key contacts and [consider our related content](#).

¹ There is no statutory right to an MZO and so there is no standardized process for requesting MZO consideration from a municipal council. Some municipalities require a formal planning application with supporting documents such as a letter of explanation for the need for the MZO and/or a planning justification report from a professional land use planner in support of the MZO. Others may have a less formal approach.

² Royal Assent was received April 14, 2022; subs 7(2), (3), (7) and (9) came into force on July 1, 2022, pursuant to *More Homes for Everyone Act*, s 14(3).

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