

Areas of Employment

Keeping up with Bill 97

Executive Summary

Bill 97 and the recently released *Provincial Policy Statement* represent a new avenue through which landowners, developers, and builders can secure employment conversions. The narrowed definition of “areas of employment” in the *Planning Act* appears to allow for an individual to apply for an official plan amendment to remove employment land from employment areas that permits principal office and retail uses without having to conform with the ordinary provincial policy tests, since lands which accommodate principal office and retail uses are no longer considered employment under the *Planning Act*, the *Growth Plan*, and the new *Provincial Policy Statement*.

First, what is an Employment Conversion?

The Place to Grow: Growth Plan for the Greater Golden Horseshoe (the “**Growth Plan**”) is often cited in planning justification reports and development application materials as justification for greater residential infill intensification than what would otherwise be permitted in an official plan.

The justification tends to be that the *Growth Plan* directs for the intensification of urban areas to optimize the use of existing infrastructure and achieve a more efficient use of land through the provision of more compact housing options that will help a municipality meet its density targets.

However, when it comes to the redevelopment of land designated in an official plan as falling within an “area of employment,” the *Growth Plan* generally restricts residential redevelopment. The general purpose and intent of these restrictions is to ensure that sufficient land will be available to promote economic development and accommodate forecasted employment growth.

Section 2.2.5 of the *Growth Plan* contains several policies intended to restrict the conversion of

lands designated as being within employment areas to non-employment uses. Instead of encouraging residential intensification, policy 2.2.5.9 creates significant barriers to the residential redevelopment of employment lands by – among other things – requiring there to be a need for the conversion and ensuring that the conversion will be compatible with existing uses in the area.

Considering that subsection 22 of the *Planning Act* provides that there is no appeal in respect of an official plan amendment that would permit the conversion of employment lands to residential uses, determining whether an official plan protects its areas of employment from conversion is critical, since a municipality’s decision to refuse an employment conversion is final and binding.

Second, how does Bill 97 narrow the definition of Areas of Employment

On June 8, 2023, the Province of Ontario passed *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023* (“**Bill 97**”). Bill 97 introduced an amendment to the *Planning Act* regarding what land-uses will be considered to fall within “areas of employment” official plan land-use designations.

Bill 97 modified the scope of official plan land-use designations by amending the definition of areas of employment in subsection 1(1) of the *Planning Act* to exclude principal institutional and commercial uses from lands in an official plan designated to permit business and economic uses.

The central implication of the amended definition of areas of employment in subsection 1(1) of the *Planning Act* is to narrow non-residential land-uses which were traditionally and typically protected from employment conversions under section 2.2.5 of the *Growth Plan*

The new *Provincial Planning Statement*, which will take effect on October 20, 2024 and replace the *Growth Plan*, generally includes similar restrictions against the conversion of employment land to residential uses as the *Growth Plan*. For example, section 2.8 of the *Provincial Planning Statement* still requires there to be a need for the conversion and for any residential uses to be compatible with existing and planned employment uses. However, because the *Provincial*

Planning Statement adopts the narrowed definition of areas of employment found in the *Planning Act*, only manufacturing, research and development, and warehousing uses are protected.

While time will tell what the full impact of Bill 97 will have upon development and redevelopment, land-use designations represent the primary “tool” in the official plan “toolbox” that determines the form of new development and redevelopment within a municipality and – in particular – allowable land-use. It therefore stands to reason Bill 97 should provide landowners, developers, and builders with a new and significant opportunity to convert employment lands to residential uses; provided, however, that the employment area permits principal office and retail uses.

Judging the implications of Bill 97 for Toronto Official Plan Amendment 680

On July 25, 2024, the City of Toronto Council adopted Official Plan Amendment 680 (“**OPA 680**”). The purpose of OPA 680 was to restrict land-use permissions in the General Employment and Core Employment land-use designations of the Toronto Official Plan to align with the amended definition of areas of employment in the *Planning Act* and the *Provincial Policy Statement*.

The effect of OPA 680 is to ensure that the conversion of land where the principal use formerly included office and retail uses will remain protected by provincial employment area policies, while inadvertently blurring the distinction between General Employment and Core Employment Areas.

When Council adopted OPA 680, it did so after receiving dozens of letters from landowners, developers, and builders disputing the “blanket” approach taken by the City to protect all land found in areas of employment from conversion to residential uses, despite the intent of Bill 97 and the *Provincial Planning Statement* to encourage residential redevelopment (where feasible).

OPA 680 will likely be subject to dozens of appeals from landowners, developers, and builders seeking to persuade the Ontario Land Tribunal that the City’s blanket approach to narrowing the permitted employment uses in areas of employment was inappropriate and not in conformity with

the amended definition of employment areas in the *Provincial Policy Statement*.

However, unlike Toronto, other municipalities have not been as quick to adopt official plan amendments which align permitted land-uses in employment areas with the amended definition of areas of employment in the *Planning Act* and the *Provincial Policy Statement*. Should such official plan amendments not be passed by their respective Councils before October 20, 2024, their employment lands will lose protection from provincial employment area policies.

Conclusion

The *Planning Act*, provincial policy, and development in Ontario is a construction site where the ever-changing regulatory landscape presents both opportunities and challenges.

The lawyers of Michael Nemanic Law have experience assisting landowners, developers, and builders with the submission of development applications which propose to redevelop underutilized employment lands into vibrant mixed-use communities.

If you have any questions or comments regarding the impact that *Bill 97* and related municipally-initiated official plan amendments will have upon your landholdings, please do not hesitate to contact Michael Nemanic Law at info@michaelnemaniclaw.com or (613)601-4639.