

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: APRIL 13, 2015

FROM: Planning Services and Financial Planning PD-043-15

DATE: March 9, 2015

SUBJECT: Provincial Review: Land Use Planning and Appeal System (Bill 73)

LOCATION: Town Wide

WARD: Town wide Page 1

RECOMMENDATION:

1. That the report entitled *Provincial Review: Land Use Planning and Appeal System (Bill 73)*, be received.
2. That this report be forwarded for information during the Special Meeting of Council scheduled for May 1, 2015.

KEY FACTS:

The following are key points for consideration with respect to this report:

- The Province initiated a review of its Land Use Planning and Appeal System and released the Land Use Planning and Appeal System Consultation document on October 24, 2013.
- On the same date the Province launched a review of the development charges system and released the Development Charges in Ontario Consultation Document.
- The development charges review included both the *Development Charges Act, 1997* and related municipal measures that levy costs on development such as section 37 of the *Planning Act*.
- Oakville participated in the Hamilton consultation session as well as the Institute of Municipal Finance and Governance Development Finance Roundtable which focused on the current development charges system and the future of financing growth in Ontario
- On January 13, 2014 Financial Planning submitted a report to Council titled Development Charges System Review: Submission to the Ministry of Municipal Affairs and Housing which outlined the town's submission to the Province in relation to the 19 questions posed as part of the consultation.

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- Planning staff participated in the Halton Area Planning Partnership (HAPP) review of the Province's consultation and submitted a joint response submission to the Province in December, 2013.
- Planning staff reported to Council (PD-019-14) on January 13, 2014 to provide a summary of comments on the key themes and questions.
- The proposed amendments are based on input from across Ontario including more than 20 public workshops and stakeholder meetings held from October 2013 to January 2014.
- More than 1,200 submissions on the land use planning and appeal system, and the development charges system were received by the Province during the reviews.
- This report provided background information in order to inform the Special Council meeting of May 1, 2015.

BACKGROUND

The Province of Ontario initiated a review of the Land Use Planning and Appeal System and the Development Charges System on October 24, 2013. As part of this review, the Ministry of Municipal Affairs and Housing (MMAH) consulted with municipalities, the public and stakeholders from October 2013 to January 2014, to discuss what changes are needed to the systems.

The municipal consultation on land use planning included regional workshops and written submissions which were attended by town staff. As part of the Halton Area Planning Partnership (HAPP), the Town submitted a joint response to the Province in December, 2013 with Halton Region, City of Burlington, Town of Halton Hills and Town of Milton. Town staff also reported to Council on January 13, 2014 (PD-019-14), providing a background on Ontario's land use planning system and recommending changes to certain areas of the land use planning and appeal system. A copy of PD-019-14 is found in Appendix A.

The consultation process for the Development Charges Systems Review also included workshops held by the Ministry of Municipal Affairs and Housing (MMAH). In addition to attending one of the provincial workshops, staff participated in the Institute on Municipal Finance and Governance Finance Roundtable which focused on the current development charges system and the future of financing growth in Ontario. Town staff also reported to Council on January 13, 2014 in regards to the written response the Ministry on the 19 questions posed as part of the consultation process. A copy of the report is attached as Appendix B.

In response to the comments received through the consultation, the Province has proposed legislative amendments to the *Planning Act* and the *Development*

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Charges Act, 1997. These proposed amendments are included in Bill 73 – the proposed *Smart Growth for Our Communities Act, 2015*, which received first reading in the Legislature on March 5, 2015. The bill would next be considered at second reading and if passed the bill would be referred to Standing Committee. The Committee determines which bills it will be considering and if Bill 73 is selected, public hearings will be held, following which the Committee reviews each clause of the bill and may at that time proposed amendments. If the bill is approved by the Committee it goes back to Cabinet for third reading and if approved is assigned a proclamation date at which time the bill would be in effect.

The purpose of this report is to provide a summary of the proposed amendments, and an analysis of whether or not the issues previously identified by staff were addressed through Bill 73. A detailed review of the amendments proposed to the *Planning Act*, as provided in Bill 73, compared with the direction provided by the HAPP joint Submission and Planning Services staff report PD-019-14 is provided in Appendix C while Appendix D provides an overview of the proposed changes to the *Development Charges Act, 1997* compared to the town's position in relation to the questions posed in the consultation document as part of the development charges review.

COMMENT/OPTIONS

Recommendations contained in staff report PD-019-14 included consideration of changes to the following areas of the land use planning and appeal system:

- The harmonization of Provincial Plan and Policy Reviews
- Restrict the automatic “right to appeal” and change the appeal system
- Increase minimum standards for public consultation

Town staff has reviewed the proposed Bill 73 amendments to the *Planning Act* in relation to the above recommendations. A brief overview of these recommendations and the associated proposed amendments is provided below.

Harmonization of Provincial Plan and Policy Reviews

Issue: Cycle of review for Provincial Plans, Regional Plans and local Official Plans are not harmonized, leading to a continuous cycle of review and update followed by appeals and hearings. Typically, once these Plans are in full force and effect, it is time to review them again.

Proposed Bill 73 Amendments: Review of policy statements are extended to 10 year intervals, instead of the previous five year requirement. Official Plan reviews are also extended to 10 years after the plan comes into force and at five year intervals thereafter.

Restrict Automatic Right of Appeals

Issue: Restriction on appeals is required to reinforce the authority of the local municipality over planning decisions. Currently, appeals can be considered “as of right”. Concerns are required to be submitted on the record, but are not required to be substantiated with evidence.

Proposed Bill 73 Amendments: Once an Official Plan is established by a municipality, appeals are not permitted for two years, unless initiated by the municipality. Global appeals of new official plans are not permitted and those who wish to appeal specific sections are required to include in their notice of appeal an explanation of how the decision of approval for those sections is inconsistent with, fails to conform with or conflicts with provincial policy statements, provincial plans or upper-tier official plans. Official plan appeals will not be permitted related to: forecasted population and employment growth numbers set out in a growth plan and where allocated by an upper-tier municipality; settlement area boundaries; vulnerable areas as defined in the *Clean Water Act, 2006*; Greenbelt or Protected Countryside Areas as defined in the *Greenbelt Act, 2005*.

Increase minimum standards for public consultation

Issue: The current regulations around public notification and engagement are out of date with current communication methods and technologies. Minimum standards do not reflect additional opportunities through online and email notification, as well as other updated tools and methods.

Proposed Bill 73 Changes: Upper and single tier municipalities are required to appoint a municipal planning advisory committee, of which at least one member must be a resident of the municipality that is not a member of council or municipal employee. The alternative measures and procedures for informing and obtaining the views of the public contained within the Official Plan is expanded from relating to only official plan amendments and zoning by-laws to also include plans of subdivision and consents. The approval notice of an official plan is required to contain a brief explanation of how the public’s written and oral submissions were considered in the decision.

While Bill 73 would implement changes in the areas identified above, it also introduces several other changes to the Planning Act as follow:

Decision timeframe

A 90 day extension to the current 180 day period for an approval authority to make a decision with respect to all or part of an official plan is proposed. The extension can be requested by a person, public body, and municipality or approval authority.

Dispute Resolution

Alternative resolution permissions are proposed, giving decision makers the ability to use mediation, conciliation and other dispute resolution techniques in certain appeals. The time for submitting the record to the OMB may be extended by 60 days where notice is provided by the decision-maker of its intention to use these techniques.

Development Permit System

The Minister may make an order requiring a local municipality to adopt a development permit system. Upper-tier municipalities may also be required by Minister's order to make by-laws imposing similar requirements on their lower-tier municipalities.

Section 37

Money collected under this section must be kept in a special account and spent only for facilities, services and other matter specified in the by-law. The treasurer is required to make an annual financial statement regarding the monies contained within the account. This statement is to be made available to the public.

Parkland Dedication

A parks plan that examines the parkland needs in the municipality is required before a municipality may set an alternative parkland conveyance requirement. The calculation of payment in lieu is revised from 1 ha/300 dwelling units to 1 ha/500 dwelling units proposed. The treasurer is required to make an annual financial statement relating to the special account for which payment in lieu funds are deposited in. This statement is to be made available to the public.

Minor Variances

Committees of adjustment are required to apply prescribed criteria when making decision about minor variances. This prescribed criterion is still under review. The decision of the committee must contain a brief explanation of the effect, if any, and how any written or oral submissions were considered in the decision. Minor variance applications are not permitted during the two year period after an owner-initiated site-specific rezoning, except with council approval.

Employment Land Review

The requirement to review employment lands every five years, in conjunction with an official plan review, has been removed. Appeals to official plans are not permitted in relation to forecasted population and employment growth, as allocated by the upper-tier municipality's official plan, but only if the upper-tier municipality's plan has been approved by the Minister.

Proposed Changes to Development Charges

As part of the consultation process related to the Development Charges System Review the province requested feedback from stakeholders on seven key areas:

- Development Charges Process
- Eligible Services
- Reserve Funds
- Section 37 (Density Bonusing) and Parkland Dedication
- Voluntary Payments
- Growth and Housing Affordability
- High Density Growth Objectives

The town responded to the questions posed by the province in the report to Council on January 13, 2014. With the exception of transit, many of the recommended changes proposed in Bill 73 differ from the town's request to the province during the consultation process. The Bill addresses the following areas as described below.

Ineligible Services

The list of ineligible services will no longer be included in the DCA. They will now be prescribed by regulation. The province will be establishing a working group to make recommendations and advise on which services should be eligible for DC's. At this time the only service they have indicated will be removed from the ineligible list is waste diversion. The town requested that all growth related services be eligible for development charges funding.

Area Specific DC's

Mandatory area rating would be introduced through regulation for prescribed services within prescribed areas. This would require municipal councils to pass area specific by-laws. The town felt that current legislation provided the flexibility to develop area specific by-laws if required to meet the growth needs of a municipality. The proposed change will require area specific by-laws in prescribed municipalities taking the flexibility away from municipalities.

Transit Services

Although no definition of transit services is included in Bill 73, the proposed changes would remove the 10% mandatory discount from transit. This would increase the funding available for transit expansion and is seen as a positive step supported by the town's submission to the province as part of the consultation. The province has indicated that the working group will provide input into increase eligible costs for the municipality beyond transit. This would be supported by the town.

Service Level Calculations

The proposed amendment to the Act would allow for prescribed services which will be calculated based on a 10 year future planned level of service. The services will

be prescribed by regulation. This would remove the 10 year historical service level calculation for those services prescribed by regulation, replacing them with a forward looking calculation. At this time it is not known which services will be prescribed. It is expected that the working group will provide input on the proposed amendment.

New Background Study Requirements

The requirements for development charge background studies is expanded to include the requirement for municipalities to give “consideration of” the use of more than one DC by-law. This is in addition to prescribed area specific DC requirements. As well background studies would now be required to include an asset management plan demonstrating that growth-related capital assets are financially sustainable over their full life cycle.

Timing of DC Payments

Bill 73 amends the DCA in regards to the timing of the payment of DC's. If a development consists of one building that requires more than one building permit, the development charge will be payable when the first permit is issued.

Increased Reporting Requirements

The reporting requirements under s.43 of the DCA will be more stringent. In addition to the current requirements, Bill 73 will require the contents of the treasurer's financial statement to include additional details on the use of funds as well as a statement as to compliance. The expanded reporting will likely be required upon passage of Bill 73.

Restrictions on the Use of Charges Related to Development (Voluntary Payments)

Under this clause a municipality will not be able to impose, “directly or indirectly, a charge related to a development or a requirement to construct a service related to a development” unless it is permitted by the Act or another Act. There will be transition provisions allowing voluntary payment agreements signed before the Bill becomes law to remain in force. Bill 73 will also give the Minister power to investigate whether a municipality has complied with the restrictions at the municipality's cost.

Next Steps

Many of the key changes proposed under Bill 73 will be enacted by regulation rather than the passage of Bill 73. The province has announced it will establish a Development Charges Working Group to advise it on the proposed changes. The working group is expected to report back by the end of 2015.

The province has indicated that while the ultimate decision on the regulations lies with the Minister they are looking for the working group to provide advice on many complex issues related to the proposed changes as well as issues that require

further consideration. The composition of the DC Working Group has not yet been determined, however, a steering committee will be formed which could include the Municipal Finance Officers Association, AMO, the developer community and Non-Government Agencies. As well the province has stated they want to focus on transit first and will be looking for input from municipalities expanding transit.

The Transportation Master Plan identifies the need for significant investment in transit to meet the town's transportation goals. Bill 73 has removed the 10% mandatory discount from transit and the service may be measured over a longer period of time; however, the methodology will be defined through regulation. Consideration will also need to be made regarding how transit is categorized and whether it will be considered in the same category as roads. The ultimate recommendations will have significant impact on the ability of the town to increase service necessary to meet the demands of growth. As a result it is important that the town provide input to the process.

The DC Working Group will also make recommendations and advise on which services should be eligible for collection of DC's, provide input into increased eligible costs for municipal costs other than transit and how the planned level of service will be calculated. It is expected that the Steering Committee will bring in technical experts to assist in determining the methodology for many of the proposed changes.

The recommendations of the working group will be considered by the province when drafting the regulations. It is therefore important that the town's position on the issues be communicated to the working group. To ensure the town has well thought out recommendations staff is meeting during April to develop preliminary positions on each of the areas under review. Council direction on the recommendations will be sought as part of the May 1, 2015 Special Meeting of Council.

CONCLUSION

Town staff has completed a preliminary review of Bill 73 and note that although a number of the town-identified concerns have been addressed or partially addressed through the proposed amendments, further amendments may still be required. A coordinated review and analysis of the implications of the proposed changes to the Region and its area municipalities will be undertaken through the Halton Area Planning Partnership with coordinated comments provided to the Province.

The Special Meeting of Council on May 1, 2015, will provide the opportunity for staff to present a summary of the changes and implications to both the Planning Act and the Development Charges Act and for Council to discuss the implications and provide direction on the final Town comments to the Province.

CONSIDERATIONS

(A) PUBLIC

The proposed changes through Bill 73 an Act to Amend the *Development Charges Act, 1997* and the *Planning Act* are the result of input received by the Province from stakeholders since their launch of the review of its Land Use Planning and Appeal System and the Development Charges System Consultation documents in October 2013.

Further input on Bill 73 will be through the Standing Committee and the cabinet approval process.

Further opportunities to provide input to the proposed changes to the *Development Charges Act, 1997* will be provided through a provincially appointed working group.

(B) FINANCIAL

There is no financial impact as a result of this report, however, changes to the current development charges legislation could have an impact of development charge funding available for growth-related capital infrastructure.

Additional financial impacts to the municipality are anticipated through Bill 73, including the proposed changes in the calculation of parkland dedication.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Impacts resulting from the proposed changes on other departments are anticipated but unknown at this time.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- continuously improve our programs and services
- be accountable in everything we do
- be honest in everything we do

(E) COMMUNITY SUSTAINABILITY

Implementation of any approved changes to the *Planning Act* and the *Development Charges Act, 1997* will ensure conformity with the town's sustainability of objectives and policies.

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APPENDICES

Appendix A – Staff Report – Provincial Review: Land Use Planning and Appeal System (PD-019-14)

Appendix B – Staff Report – Development Charges System Review

Appendix C – Proposed Amendments to the *Planning Act*

Appendix D – Proposed Amendments to the *Development Charges Act, 1997*

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