

## REPORT

### PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: JANUARY 13, 2014

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**FROM:** Planning Services Department

PD-019-14

**DATE:** December 10, 2013

**SUBJECT:** Provincial Review: Land Use Planning and Appeal System

**LOCATION:** Town wide

**WARD:** Town wide

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#### RECOMMENDATION:

That the report entitled *Provincial Review: Land Use Planning and Appeal System*, be received.

#### KEY FACTS:

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

- The Province launched 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.
- The purpose of the review is to obtain input and views on how the current land use planning and appeal system is working. Concerns about the system have been defined by the Province around four key themes.
- Three open houses were held in Ontario to obtain public input.
- Planning staff attended the open house facilitated by the Ministry of Municipal Affairs and Housing held in Kitchener on November 14, 2013.
- Planning staff have participated in the Halton Area Planning Partnership (HAPP) review of the Province's consultation and submitted a joint response.
- Comments are due to the Province by January 10, 2014.
- A copy of this report will be provided to the Province on January 10, 2014.
- This report also addresses the resolution of Council at the November 18, 2014 Council meeting which directed staff to report on whether the review of the Ontario Municipal Board appeal process will reinforce local government authority for planning decisions.

#### BACKGROUND:

The Ministry of Municipal Affairs and Housing issued a Land Use Planning and Appeal System Consultation document on October 24, 2013 and announced public consultations on the review of the system.

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The document, attached as Appendix A, provides an overview of the current land use planning and appeal system highlighting a number of key facts about the planning process in Ontario and areas of concerns. The areas of concern are focused around four key themes which serve as the focal point for the review:

**Theme A** – Achieve more predictability, transparency, and accountability in the planning/appeal process and reduce costs.

**Theme B** – Support greater municipal leadership in resolving issues and making local land use planning decisions.

**Theme C** – Better engage citizens in the local planning process.

**Theme D** – Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth.

The consultation document lists a series of questions (17 in total) under each theme for discussion and comments.

The purpose of this report is to provide a summary of comments on the key themes and questions. A detailed response has also been provided through HAPP and signed by the area municipal planning directors in Halton Region. A copy of the HAPP submission is attached as Appendix B. There are several key concerns shared by the Area Planning Directors which are reiterated in this report.

The Province also released a consultation document on Development Charges in Ontario on October 24, 2013. The Ministry of Municipal Affairs and Housing is also consulting with municipalities on what changes are needed to the *Development Charges Act*. Finance department staff are preparing a separate report in response to the *Development Charges Act* review. Planning staff have provided input into that report as it relates to Section 37 and parkland dedication.

## COMMENT/OPTIONS:

Ontario's land use planning system has been regulated for over 100 years with the first legislation dating back to 1912 when larger municipalities were provided with zoning tools to regulate certain aspects of land development. In 1917, the Province passed the first *Planning and Development Act* which was revised and amended several times.

After the *Planning Act* was enacted in 1970, a review was undertaken in 1977. The report from the 1977 review noted that *"the Province should not be concerned with whether municipalities engaged in 'good planning' but only whether their planning actions affect defined Provincial interests. Good planning should be left to the municipality and its inhabitants to settle for themselves"*. The review also noted that

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*“Regional intervention in local planning should be limited to matters of direct regional planning concern”.*

Between 1991 and 1993 the Sewell Commission undertook a review of the *Planning Act*. The Commission recommended that the provincial government should adopt stronger land-use planning policies to govern all those in the province making land-use decisions. The policies proposed by the Commission included *“the protection and enhancement of significant natural features; prohibiting sprawling development; the introduction of affordable housing into all new development; the protection of quality agricultural areas; and the pursuit of energy and water conservation”*. The report also proposed a number of changes to the decision making process to make them more open, accessible and accountable. Most of the Commission’s recommendations were approved by the provincial government at the time.

Since 2003, the Province has become increasingly more involved in local planning and have redefined not only their role but the role of upper tier levels of governments in land use planning. The Province has undertaken several reviews of the land use planning system which have resulted in a number of additional changes to the *Planning Act* and they have introduced new legislation to guide land use planning and which requires municipalities to update and revise its local plans (Bill 26, Bill 51, *Strong Communities Act*, *Greenbelt Act*, *Provincial Policy Statement* and the *Growth Plan for the Greater Golden Horseshoe*).

The Province has indicated that given the number of changes made to the land use planning system over recent years and continuing concerns that have been raised, there is a need to review the current system.

There are some significant issues with the land use planning system that need to be addressed and there are changes that need to be made. While the current Provincial consultation and review is welcomed, the timeframe and timing of the review is not. In comparison to previous Provincial reviews, the level of engagement and time to provide comments is severely limited. The Sewell Commission review undertaken in the early 1990’s provided over four months of public consultation with meetings of the Commission in over 38 communities across Ontario. The current review has held three such meetings and the timing for review and comment (between November and December) comes at a time when the majority of municipalities are completing their annual budgeting processes.

The consultation document also notes that several matters will not be discussed or considered including the elimination of the Ontario Municipal Board (OMB) and the OMB’s operations, practices and procedures. Given the nature of the appeal system, it is almost impossible not to include commentary on the associated issues

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related to appeals to the OMB. Stating that the OMB is not to be discussed is extremely shortsighted.

Based on the themes and questions presented, the review process seems to be only focused on a discussion of the symptoms and is not looking at the causes of issues faced by municipalities in dealing with the challenges of the current land use planning and appeals system. A more responsive and balanced process to examine the issues and develop solutions is required given the diversity of the issues and challenges faced by municipalities. The review should also be comprehensive and include an examination of the OMB and its associated role in the process. It is hoped that the Province will have regard to those issues raised in relation to the OMB process.

### **Summary of Responses to Themes and Questions**

The following is a summary of the four themes presented in the consultation document, the questions listed under each and planning staff's general response to the questions and issues raised.

#### **Theme A: Achieve more predictability, transparency and accountability in the planning/ appeal process and reduce costs**

- 1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?*
- 2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?*
- 3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?*
- 4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?*
- 5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?*
- 6. How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?*

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*7. Should there be additional consequences if no decision is made in the prescribed timeline?*

*8. What barriers or obstacles need to be addressed for communities to implement the development permit system?*

There are two fundamental problems with the current planning and policy review framework as well as the appeal system.

### ***The endless cycle for review and update***

The cycle of review for Provincial Plans, Regional Plans and local Official Plans are not harmonized. This issue has been raised continuously by municipalities, both local and regional for several years.

The misalignment of provincial policy releases and timing requirements creates a continuous cycle of reviews and updates, which lead to a continuous cycle of appeals and hearings with municipalities constantly trying to play “catch up”. Oakville is one of the few municipalities who were able to complete a new Official Plan before the June 2009 deadline as imposed by the Province. However, due to appeals, the actual plan did not come into force and effect until May of 2011, almost two years later. Notwithstanding a two year delay, Oakville’s experience is one of the more successful situations. Other municipalities are still working to bring their Official Plans into conformity in 2014 with Regional Plans that are only now being approved (in some cases upwards of four to five years to complete the appeal and OMB processes). By the time these plans are finally in place, the Province has released its updated population and employment forecasts, requiring municipalities to start again.

### ***Automatic Right to Appeals***

One of the most critical issues that must be addressed in relation to improving the land use planning and appeal system is in relation to **what** can be appealed to the OMB and **when** it can be appealed. The HAPP submission clearly sets out the need to restrict appeals following an approved Official Plan which implements and conforms to the Growth Plan. The restriction on appeals is required to reinforce the authority of local municipalities over planning decisions.

Using the process of the Livable Oakville Plan as an example, the process to complete it was comprehensive and involved extensive public consultation as well as technical review and analysis. Oakville took what was required by the Province, engaged with the public, undertook technical studies, formulated policies which were

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discussed, revised and finalized and completed its Livable Oakville Plan in June 2009. Through the review by the Region and the comments received by the Province, some modifications were made and a final approval was given by the Region in December of 2009. Following that approval, 56 appeals were received, and while several were site specific, many were appeals of the entire plan.

While many issues with the plan's policies were discussed and addressed through the plan development process itself, the appeal process allowed for those matters which could not be resolved, to be adjudicated before the OMB.

Once those issues had been adjudicated and the OMB had approved the Livable Oakville Plan, with some changes, the Livable Oakville Plan provided for an implementation of the Province's required legislation. It sets out where and how growth should take place in Oakville to 2031. While there may be some areas subject to further study, as identified in the Plan, or some other circumstances that warrant the Town making a change to policy, after the OMB has approved the Plan it should not be subject to further appeals through private amendments that are refused by Council. The same principle should apply to Regional Plans with the exception of the local municipalities having a right to appeal.

This would be an extension of the current appeal restrictions that apply to employment lands wherein appeals in relation to employment land conversions are restricted and not permitted outside of the municipal comprehensive review process which is in most cases done as part of a municipality's five year review process. The same should apply to residential policies and intensification. For example, if the town has established the density and height limits in an area that it has deemed appropriate and good planning to meet its intensification targets, only the town should be able to determine if a change to policy is warranted.

Also in relation to when appeals can be considered, following the approval of a new official plan through a conformity exercise, appeals should not be "as of right". In some cases, you must seek leave to appeal from the courts to appeal a decision, in other words you must have a case and reach a certain threshold of evidence to allow an appeal. It is recommended that the Province implement this type of system rather than permitting appeals through a process that only requires you to have submitted concerns on the record and not to substantiate them with any evidence. This would place the onus of all participants, members of the public and/or developers, to have a substantial basis on which to proceed with an appeal. This would assist in alleviating unsubstantiated appeals lodged for the purpose of delay or founded on self-interests or apprehension, from legitimate appeals based on real evidence.



### ***Development Permit System***

On the question regarding the Development Permit System, the HAPP group has provided comments on this matter which suggests it has not been overly successful due to the mechanics, amount of resources needed to implement the system and lack of public engagement and Council control once completed.

#### **Theme B: Support greater municipal leadership in resolving issues and making local land use planning decisions**

*9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?*

*10. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?*

*11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?*

*12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?*

*13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?*

This theme looks at four matters – cooperation between parties in planning, local appeal bodies, pre-consultation and co-ordination between upper and lower tiers.

#### ***Cooperation between parties***

On the issue of “local planning tensions” the question raised by the Province assumes that there are ways to provide for collaboration to resolve local planning tensions. There is no single solution to resolving land use planning tensions. The best approach is the approach best suited to a municipality based on its local interests and local context. The question should be how can the planning process be improved to provide for more balanced planning outcomes whether it is a study which engages in the development of a vision and objectives where collaboration and consensus is extremely important, or whether it is through the review of a development application where all interests are considered but the solution is

required to be in the greater public interest. Good policy is formulated from comprehensive engagement and analysis. Good policy leads to good planning.

### ***Local Appeal Bodies***

On the issue of local appeal bodies, most municipalities have assessed the financial costs and resources required to establish such bodies and determined that it is not feasible given the OMB exists for the same purpose.

### ***Pre-consultation***

Pre-consultation is used for most applications at the town and even for those for which it is not legislated; the Town requires applicants to attend its weekly meetings. The town's pre-consultation process engages the District Planning teams, internal town departments along with Region and Conservation Halton staff. This has proven to be a successful model for both pre-consultation meetings and technical review meetings to improve the planning application process.

### ***Co-ordination and co-operation with Upper Tiers***

On the issue of co-ordination and cooperation between upper and lower tier municipal governments, while there is excellent cooperation between the town and the Region there is always room for improvement. The harmonization of policy reviews by the Province will provide for better coordination of reviews between the Region and its local municipalities.

### **Theme C: Better engage citizens in the local planning process**

*14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?*

*15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?*

Oakville's public engagement process in local planning is one of the most effective and extensive in the Province. On the development application side, the town engages citizens above and beyond the current *Planning Act* requirements with additional public information meetings and ongoing consultation and working group meetings to address issues and concerns throughout the process.



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On special projects and studies, the town engages in a highly effective way providing the public with empowerment to be engaged not only in responding to ideas but in developing ideas and plans. Our accessible and open public engagement processes, whether within studies or through the development application process, is well communicated and documented. Planning staff's analysis always provides for a clearly explanation of how citizen input has not only been considered but how it has effectively been utilized. Good planning processes should already be doing this.

The Province should complete a detailed review of its current regulations around public notification and engagement as they are out of date with current communication methods and technologies. The current minimum standards do not reflect additional opportunities that should be added to the minimum standards to include online and email notifications as well as other updated tools and methods.

**Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth**

16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?

On issues related to protecting employment land and better alignment of land planning and infrastructure decisions, one matter that the Province must address is consistency in relation to land budgets and defining employment land. Currently municipalities have varying policies in place for defining employment lands, what constitutes a conversion, and what methodologies are used to determine land needs whether for employment or residential uses. This is one area where the Province needs to provide more guidance to ensure more consistency.

The question in relation to appeals (#17) is addressed under Theme 1.

## Conclusions

While the Province has provided municipalities with an opportunity to provide comments on its review of the land use planning and appeal system, it is within a

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limited scope and timeframe. A more comprehensive look into the causes rather than the symptoms of the issues noted, is required to appropriately address the challenges faced by most municipalities.

Changes related to the following areas of the land use planning and appeal system as outlined within this report should be considered:

- the harmonization of Provincial Plan and Policy Reviews
- restrict appeals to approved Official Plans
- restrict the automatic “right to appeal” and change the appeal system
- increase minimum standards for public consultation

## **CONSIDERATIONS:**

### **(A) PUBLIC**

The public is encouraged to provide input into the Province’s review through the methods as outlined in the consultation document attached as Appendix A.

### **(B) FINANCIAL**

N/A

### **(C) IMPACT ON OTHER DEPARTMENTS & USERS**

All town departments that participate in the land use planning and appeal system may be impacted by any changes the Province may consider. Planning staff are providing these comments and the department responsible for the administration of the planning process under the *Planning Act*.

### **(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS**

This report addresses the corporate strategic goal to:  
To be the most livable town in Canada

### **(E) COMMUNITY SUSTAINABILITY**

The planning process is undertaken to ensure conformity with the town’s sustainability objectives and policies.

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**APPENDICES:**

Appendix A: Land Use Planning and Appeal System – Consultation Document  
(Fall 2013)

Appendix B: HAPP Land Use Planning and Appeal System Joint Submission  
(December 2013)

Prepared, Recommended and Submitted  
by:

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