



Hamilton

City of Hamilton  
City Hall, 71 Main Street West  
Hamilton, Ontario  
Canada L8P 4Y5  
www.hamilton.ca

Planning Division, Planning and Economic Development Department  
Physical Address: 71 Main Street West  
Phone: 905.546.2424 ext. 4281 Fax: 905. 905-540-5611

June 2, 2015

John Ballantine  
Manager  
Ministry of Municipal Affairs and Housing  
Local Government and Planning Policy Division  
Municipal Finance Policy Branch  
777 Bay Street  
13<sup>th</sup> Floor  
Toronto ON M5G 2E5

Dear Mr. Ballantine:

Subject: Comments on Proposed Bill 73 – *Smart Growth for Our Communities Act, 2015*

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Thank you for the opportunity to provide comments on the proposed Bill 73 – *Smart Growth for Our Communities Act, 2015*. Please accept these comments as our draft comments. Our final comments will be forwarded to the Province once they have been endorsed by Council in July 2015.

The Province should be commended for bringing forward the legislative changes proposed by Bill 73. The Bill contains some significant changes and opportunities that will provide for greater transparency, accountability, cost-effectiveness and citizen engagement. We are optimistic that Bill 73 will lead to positive changes for the land use planning system in Ontario.

The City has reviewed Bill 73 and is pleased to offer the following draft comments for your consideration. We must however, acknowledge that the Province should consider a more comprehensive review of the land use planning and appeal system in Ontario. These meaningful changes must include changes to legislation and reform to the Ontario Municipal Board. This review should investigate whether the OMB should be eliminated, scoped or replaced by a different system and must look at OMB operations, practices and procedures.

Thank you again for the opportunity to provide meaningful input into this review. We look forward to reviewing the final version of Bill 73. City of Hamilton staff would be pleased to meet with you to discuss these comments in greater detail.

Sincerely,

Steve Robichaud, MCIP, RPP  
Director of Planning and Chief Planner

cc: Jason Thorne, General Manager, Planning and Economic Development  
Anita Fabac, Manager of Development Planning, Heritage and Design

## CITY OF HAMILTON RESPONSE TO BILL 73

In addition to these comments, staff have attached the letter which was forwarded to the Province in January 2014, for reference.

### 1. 90-day Extension

The one time, 90-day extension for applications for Official Plan Amendments will provide the City with some additional time to make a well informed decision, however Bill 73 only provides for the one-time extension of 90 days and only applies to Official Plan Amendments. Even with the one-time additional extension proposed, the processing period for Official Plan Amendments will still be very restrictive for the amount of work and complexity of issues that arise. In addition, Bill 73 gives permission for the extension to be terminated at any time. Should a municipality give notice of the extension to an applicant for an Official Plan Amendment, the applicant could then in turn terminate the additional timeframe, negating the ability for the municipality to have additional time to review the application.

The proposed changes to Bill 73 should require, through legislation, a lengthened timeframe for Official Plan Amendments without the need for giving notice and termination and should be expanded to apply to Zoning By-law Amendments and Plans of Subdivision.

In Report PED14004, staff recommended that the Province conduct a review of the 120-day(rezoning)/180-day (Official Plan Amendments and Subdivisions) prescribed timeframe under which a decision must be made to determine if it is an appropriate length of time for a municipality to make a well informed decision on an application. Staff also recommended that this review investigate lengthening the timeframe or providing municipalities with the ability to restart the timeframe if additional information is deemed necessary by the municipality and that the 120-day/180-day timeframe begin on the day an application is deemed complete or significantly revised. Staff continues to recommended that the Province expand the prescribed timeframe for Official Plan Amendments, Zoning By-law Amendments and Plans of Subdivision.

**Recommendation:** Bill 73 allow for a lengthened timeframe commencing on the day an application is deemed complete for Official Plan Amendments without the need for giving notice and should be expanded to apply to Zoning By-law Amendments and Plans of Subdivision.

**Recommendation:** The Province should provide municipalities with the ability to restart the timeframe if additional information is deemed necessary by the municipality or conversely the application is amended by the applicant which results in a recirculation of the application to the prescribed agencies/bodies for review and comment.

**Recommendation:** Should the Province proceed with the one time extension, the ability to terminate the 90-day extension be removed.

## 2. Parkland Dedication

With respect to parkland dedication, staff feels that determining dedication rates should be left to each individual municipality to account for its own specific needs. The reduction proposed by Bill 73 may assist in encouraging residential projects throughout areas of the City where an increase in density is envisioned and encouraged by the Official Plan and reduce economic hardship on developers. However, the appropriate rate should be determined by each individual municipality.

The City undertakes parks planning as a best practice and is supportive of the requirement for a parks plan as proposed by Bill 73 and is supportive of the requirement to disclose how money obtained through cash in lieu of parkland is spent.

However, the City recommends that parkland dedication deferrals, similar to deferrals for Development Charges under the *Development Charges Act* to allow for phased payments and the registration of deferral agreements on title, be permitted by the *Planning Act*.

**Recommendation:** The Province provide municipalities with the flexibility to determine their own parkland dedication rate and provide municipalities with the ability to defer dedication through registered agreements.

## 3. Two year Moratorium

These proposed changes to Bill 73 would provide for a period of time (two years) when no applications for an amendment would be permitted. It is important to clarify that this would only apply to a new Official Plan or complete replacement of a Zoning By-law, and not to a City Initiated Official Plan Amendment or Housekeeping amendment to the Zoning By-law.

These proposed changes may provide needed time to test the appropriateness of new Official Plan policies and new Zoning By-law regulations but may prevent unforeseen development applications that would benefit the city. It may result in an increase in the number of appeals filed. In addition, because complete replacement of Official Plans and Zoning By-laws may not be preferred, this moratorium would not apply. Through the January 2014 letter, staff recommended that when there is an Official Plan Amendment or Zoning By-law Amendment that support matters that are provincially approved, that the right to appeal these amendments be removed. Bill 73 has not addressed this recommendation.

With respect to further consultation, staff recommends that the Province meet directly with the City to discuss our experiences with minor variances and what we believe constitutes a minor variance to assist the Province with defining Province-wide exactly what constitutes a minor variance. Alternatively, the City requests that it be included in the provincial working groups to be established to review various land use matters.

**Recommendation:** That the Province expand this moratorium to all amendments that constitute a new Official Plan and comprehensive Zoning By-law and provide Council with the ability to determine if an amendment is needed in the case of an error.

**Recommendation:** That Bill 73 remove the right to appeal Official Plan Amendments and Zoning By-law Amendments that support matters that are provincially approved.

**Recommendation:** The Province meet directly with the City to discuss our experiences with minor variances and what we believe constitutes a minor variance to assist the Province with defining Province-wide what constitutes a minor variance.

#### 4. Limiting Appeals for Certain Official Plan Matters

In Report PED14004, the City recommended that the Province remove the right to appeal an entire Official Plan Amendment. The proposed changes to Bill 73 address this and will not permit "global appeals". Staff are very supportive of this proposed change. In addition, staff are supportive of not permitting appeals of any part of an Official Plan that relates to vulnerable areas under the *Clean Water Act* and the *Greenbelt Act*. In addition, staff are supportive of removing the ability to appeal the Official Plan with respect to the population and employment Growth Forecasts and for second units, which are already contained within our Official Plans.

These proposed revisions will assist in reducing delays in final implementation of municipal Official Plans. However, staff continue to recommend that the Province remove the ability for Official Plans, Zoning By-laws or related amendments that support all matters that are provincially approved (e.g. land budgets), to be appealed, and refine and narrow the range of appeal permissions under the *Planning Act*, in particular conformity exercises which implement Provincial Plans.

**Recommendation:** The Province remove the ability for Official Plans, Zoning By-laws or related amendments that support all matters that are provincially approved, to be appealed, and refine and narrow the range of appeal

permissions under the *Planning Act*, in particular conformity exercises which implement Provincial Plans.

## 5. Dispute Resolution

Staff are supportive of applying Alternative Dispute Resolution (ADR) techniques to assist in resolving appeals related to Official Plan and Zoning By-law Amendments, Plans of Subdivision and Consent Applications. This will assist in saving time and money for the municipality, applicants/appellants and other interested parties. Additionally, this could also reduce the number of appeals being heard by the OMB.

It should be noted that this process would not apply to minor variance appeals and the rationale for excluding minor variance appeals has not been provided. As the majority of appeals the City participates in relates to minor variances, the application of Alternative Dispute Resolution techniques would be most beneficial. In Report PED14004 the City recommended that the existing process for minor variances be modified by looking at eliminating the Committee of Adjustment, delegating decisions for minor variances and consents to the City or allowing appeals to the OMB on error of law only. Staff continues to recommend a further comprehensive review of the existing Committee of Adjustment process to provide municipalities with a streamlined process to support and encourage greater municipal leadership in local planning decisions.

**Recommendation:** The Province expand the use of ADR techniques to minor variances.

**Recommendation:** The Province modify and streamline the existing approval and appeal processes for minor variance and consent applications.

## 6. Dismissal without a Hearing

Staff are supportive of the proposed requirement that notices of appeal relating to Official Plans explain how the decision is inconsistent or lacks conformity with a policy statement or a provincial plan. This level of detail will provide clarity to the OMB, municipalities and other interested parties in the reason for the appeal and will ensure that there are fewer frivolous appeals filed.

In the January 2014 letter, staff suggested that for appeals to an entire Official Plan or Zoning By-law an appellant should be able to demonstrate proof that they have engaged the municipality in a fulsome way. The Report also advocated for stronger criteria for determining frivolous and vexatious appeals. Bill 73 does not address these recommendations.

**Recommendation:** The Province require, as part of an appeal, demonstration that the appellant has engaged the municipality in a fulsome way.

## 7. Notice of Decisions

Staff are supportive of this proposed change and this was identified in Report PED14004. This will benefit those that participated in a public meeting or Committee of Adjustment meeting and provided written or oral submissions in that they could see and understand how their input was considered by Council and the Committee of Adjustment and provide transparency. However, it is important to note that in major planning projects this will cause delays. As outlined in Report PED14004, staff suggests that clear guidelines be provided that identify the information to be included and how this information is to be shared. It is important to note that the City includes a summary of all consultation received and an analysis of how it has been addressed in all of its staff reports as a matter of best practice. Furthermore, staff are currently reviewing the process to identify and assess options for further public input at earlier states of the review process.

**Recommendation:** The Province develop clear guidelines that identify the information to be included in a notice of decision and how this information is to be shared.

## 8. Information Considered by Council

Staff are supportive of this proposed change. In the January 2014 letter, staff recommended that the *Planning Act* be changed to require the OMB to have regard to a Council decision after an appeal for non-decision has been filed. As Council receives the benefit of a staff review, planning opinion and an analysis of written comments from the public, the OMB should have regard for Council decisions in these circumstances.

## 9. Official Plan Reviews

The January 2014 letter requested that the Province align the review of major Provincial Plans and policy documents. Bill 73 does give Council the discretion to combine a provincial plan conformity exercise with an update of the Official Plan, but it does not require the Province to align its reviews.

The January 2014 letter also recommended that the Province increase the mandatory 5-year review period for municipal documents to 10 years. While Bill 73 does permit a new comprehensive Official Plan process to occur on a 10-year cycle, it will still require that Official Plan reviews be undertaken every 5 years. Staff continue to express that Official Plan reviews should be completed every 10 years to provide more certainty and predictability into the process.

**Recommendation:** That Bill 73 be revised to require the Province to align its own policy reviews and increase the mandatory 5-year Official Plan review period to 10-years.

## **10. Employment Areas**

Staff are supportive of this proposed change as it provides municipalities with more protection of its Official Plan policies and the long-term protection of employment lands within the City.

## **11. Public Consultation**

The City of Hamilton Official Plan contains policies on public consultation and staff support alternative mechanisms and formats for obtaining public input on major initiatives. As such, staff are supportive of this proposed amendment as it will ensure that the consultation the City does as a best practice will be a requirement through Official Plan policy.

## **12. Planning Advisory Committee**

While staff are supportive of the use of advisory committees to Council and the benefits that these committees bring to the decision making process, staff seek further direction from the Province on the role and scope of the advisory committee and whether the existing advisory committees would qualify as a "planning advisory committee". The City has a number of advisory committees that deal with land use planning matters (i.e. Environmentally Significant Areas Impact Evaluation Group, Agricultural and Rural Affairs, Cross-Melville District Heritage Committee, Hamilton Municipal Heritage Committee, Heritage Permit Review Sub-Committee). Utilizing existing advisory committees and reducing duplication would allow the City to utilize existing resources in providing advice on land use planning matters.

**Recommendation:** The Province define the role and scope of the planning advisory committee and confirm that the City's existing citizen advisory committees meet the intent of the regulation and that no further committees are required.

## **Additional Recommendations**

Through the January 2014 letter, staff recommended additional changes to the Land Use Planning and Appeal System that have not been addressed by Bill 73. Staff continues to stress the importance of these concerns and the need for the Province to review and address these issues. These include:

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



- The Province align the review of major Provincial plans and policy documents;
- The Province conduct a review of the current OMB process and investigate different tribunal models for appeals to Minor Variance and Consent applications;
- The Province create stronger criteria for determining frivolous and vexatious appeals;
- The Province eliminate the right to appeal for non-decision, defer the 120/180 day period to the date an application is deemed complete (as opposed to accepted), or alternatively refine the permissions for appeals for non-decision;
- The Province make the necessary legislative changes to disallow *de novo* appeals;
- The Province require that no new information be presented at OMB Hearings, and in circumstances where new information is presented, it be referred back to Council for a decision; and,
- The Province is encouraged to develop a Regulation for Section 34(16) of the *Planning Act* (zoning with conditions);

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

- The Province amend the *Planning Act* to make pre-consultation with municipalities mandatory for applications under the *Planning Act*, except minor variance and consent applications, and ensure that an application cannot be deemed complete unless all required applications are submitted as a complete package;

#### **Better engage citizens in the local planning process**

- The Province amend the *Planning Act* to include the requirement/discretion for further consultation with a pause in the timing for review of a *Planning Act* applications if there are outstanding issues; and,
- The Province amend the *Planning Act* to require giving notice through means other than newspapers or mail, and to expand the notification requirements to include tenants;

#### **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 Province make the appropriate legislative changes to allow municipalities to plan for a 50-year planning horizon instead of 20 years; and,

- The Province make the appropriate legislative changes to give more power to municipalities to protect future employment lands and uses, and make provision for "soft infrastructure" for the long-term benefit of the municipality.

In addition, Council identified the following recommendations be forwarded to the Province for review:

- That notification be provided by first class Canada Post Mail, and that the notification be provided to each and every resident within 500m around the subject property, with the additional postage cost be at full cost recovery;
  - That the OMB take into consideration the state of the soft infrastructure around any subject property and include it into their decision regarding the timing of the subject property for that approval; and,
  - That applicants be required to hold appropriate neighbourhood public meeting(s) as part of the consultation process with respect to all major applications i.e., official plan, development, zoning and that where applicable, the Neighbourhood Associations be advised of such public meetings.
- Inclusionary Zoning
    - The Province should investigate providing municipalities with the authority to seek affordable housing through the use of inclusionary zoning (a share of new construction to be affordable by people with low to moderate incomes) to support the City's Housing and Homelessness Action Plan to increase affordable housing projects in the City.
  - Public Health
    - The Province should amend the transportation and land use planning policies to better support the achievement of compact, complete communities with increased active transportation and public transit use through changes to the *Planning Act*, the land use appeal process and the OMB's mandate.
    - The Province should support a public health perspective on the achievement of healthy, compact, complete communities by actively supporting the involvement of health units in land use planning in municipalities.
  - Ontario Municipal Board
    - The Province should expand the scope of the Provincial review to include the OMB operations, practices and procedures. This review should investigate

whether the OMB should be eliminated, scoped or replaces with a difference system. A comparison of other models and narrowing of appeal permissions should be investigated.

Staff continues to recommend that the Province review the items listed above and make the necessary legislative and procedural changes to implement these recommendations.