



Hamilton

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May 25, 2021

Ministry of Municipal Affairs and Housing  
777 Bay Street  
Toronto, ON  
M7A 2J3

**Re: Bill 276, Proposed Changes to Land Division Provisions in the Planning Act**

Dear Sir or Madam:

On behalf of the City of Hamilton, I am pleased to provide this letter as Hamilton's submission on Bill 276. Please find attached to this letter an outline of the key submissions the City wishes to make on the proposed changes. City staff will be taking a report to Planning Committee on June 15, 2021 and to Council on June 23, 2021 outlining our submission. Council's position will be forwarded to the Province once it has been ratified.

We look forward to seeing the results of the consultation on Bill 276. City staff would be pleased to meet with you to discuss these comments in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Robichaud".

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

Copy to

Anita Fabac, Manager of Development Planning, Heritage and Design

## CONSENTS

### **Permit a purchaser of land or the purchaser's agent to apply for a consent.**

The proposed amendments to Section 53 (1) and (1.1) of the *Planning Act* will allow a severance on the basis of an agreement of purchase and sale whereas the existing regulation permits only an owner of a parcel of land. An agreement of purchase and sale is not ownership, nor does it require any significant financial investment. As a result, a severance can be granted to the prospective purchasers, the conditions fulfilled, then the agreement is voided.

The proposed changes will also have a significant impact in prime agricultural areas where severances are limited to surplus farm dwellings.

More specifically, the PPS 2020 states:

- "2.3.4.1c) Lot creation in prime agricultural areas is discouraged and may only be permitted for:
  - c) a residence surplus to a farming operation as a result of farm consolidation."

The Greenbelt Plan has a similar policy (Policy 4.6 f)).

Farm consolidation means the farm has been acquired and an agreement of purchase and sale does not fulfil this requirement. A test that requires a farmer to own (has acquired) the land has a higher degree of certainty that the severance is legitimate. In prime agricultural areas where additional residential lots are harder to create, a purchase and sale agreement can be created for the purposes of the severance and once all conditions are met, it can be terminated.

The City does not support any change to the *Planning Act* that facilitates a severance based on a purchase and sale agreement.

Conditions of Consent, such as Consent Agreements, are still to be addressed by Owner. The City recommends that the Province be consistent throughout the Act in terms of requirements.

### **Permit an application for a consent to be amended by an applicant prior to a decision about the consent being made and if amended the consent granting authority can impose terms related to the amended application.**

The proposed addition of Section 53(4.2.1) allows an application for consent to be amended prior to a provisional consent being granted. This addition appears to be a change for clarification. It has been the practice of the City to allow amendments to applications with a new review process and circulation required where necessary. If this change is made, Municipalities will be required to review whether additional criteria needs to be set out related to amending applications.

**Provide that a regulation requiring a public meeting for a consent application could specify other requirements related to the public meeting.**

Consents currently do not require a Public Meeting, however it has been the practice of the City to hold Public Meetings for all consents. The addition of Section 53(5.1) allows for a regulation requiring a Public Meeting to also set out additional criteria for the Public Meeting, including those who can make representation and what information may be required to be available.

At this time there is not a proposed regulation for the City to review regarding what additional requirements may or may not be required for Public Meetings prior to a decision regarding consents.

While staff would prefer that the requirements of a Public Meeting be specified in the *Planning Act*, rather than a regulation, when a regulation is proposed, staff would request that it be explicit that Virtual Meetings meet the test of a Public Meeting under this requirement.

**After a notice of appeal is received, a municipality or the Minister may be required by the LPAT to provide information and materials as specified by the LPAT.**

The addition of Section 53(15(c)) appears to be for clarity. It is the practice of staff to forward any documents requested by the LPAT.

**Provide a municipality or the Minister with the authority to extend, by up to one additional year, the one year period during which the conditions of consent must be satisfied.**

The addition of Section 53(41.1) allows for the time to fulfil conditions to be extended by up to one year, if requested by the applicant. Additional materials may be required to accompany this request.

The Province should clarify if the request for an extension for an additional year under subsection 53(41.1) should be made at the time of application, or is it intended to be made in situations where the deadline for satisfying conditions is approaching and further time is needed.

The Province should also clarify as to whether this power of can be delegated under Section 54(5).

**Require a municipality or the Minister to issue a certificate to a consent applicant for the retained land in addition to the requirement to provide a certificate for the severed lands, if conditions are fulfilled. This would be subject to the applicant, as part of the application for consent, providing a legal description for the retained land which can be registered.**

The addition of Section 53(42.1) gives Council or the Minister the authority to issue a certificate for the "retained land" as well as for the lands to be conveyed. Staff do not currently have concerns with this as a requirement for the certificate is to provide a conveyable legal description and may avoid issues in clarity of title.

The Province should clarify the definition of “retained land” to avoid unforeseen issues. The assumption is that it is meant to apply to “retained land” that formed part of a Consent application. However, the way the definition is worded, it could refer to any land that abuts land for which a certificate of Consent is issued, even if that abutting land was not part of the Consent application that gave rise to the certificate.

Municipalities may need to update Consent application forms to request the legal description for the retained lands and a survey of the entire lands in order to address this regulation.

**Provide clarity that criteria for land division and conditions may be applied to the lands that are the subject of the application and the remaining part of the lot.**

The addition of Section 53(12.1) provides clarity that criteria per Section 51(24) and conditions per Section 51(25) apply to both the severed and retained parcels of land. One of the effects of the change would be that road widenings may be applied to both the severed and retained lands. Currently, the City has no concerns with this proposed change.

**Permit owners, charges, purchasers or their agents to apply to the municipality or the Minister for a certificate of cancellation in respect of land previously conveyed with a consent that, if approved and registered, would remove the application of specified exceptions from subdivision control in relation to the land.**

The addition of Section 53(45) allows for an application to “cancel” a previously received consent. This cancellation, or decision to not cancel, is not appealable. This would eliminate the principle of “once a consent, always a consent”. This enables the applicant to effectively merge properties that were previously severed. There are currently no proposed requirements for criteria for the cancellation certificate under the *Planning Act*, but the provisions do allow for Council/Minister to set out their own requirements (53(47)).

The addition of Section 53(46) also provides that no further delegation is required as Sections 4 and 5 are deemed to include the authority to issue certificates of cancellation.

The regulation should provide clarity in terms of the criteria to approve or deny a cancellation request.

The new subsection 53(42.1) allows an owner to request a certificate for retained land, and the Province should clarify if such certificate is required for a conveyance under Section 50(6) or any future conveyance.

## **VALIDATIONS**

**Require that a decision regarding a validation must conform with the same criteria which are applicable to consents.**

The proposed changes to Section 57 (6 and 7) relates to a change in the criteria required for a validation certificate. There is currently a regulation (O. Reg. 144/95) that sets out requirements for a validation certificate to be issued. The proposed new subsection 57(6) refers to the criteria for validation certificates being the same as that for the "criteria" for Consents under Section 53. Currently the prescribed criteria for a validation certificate in O. Reg. 144/95 are clear. But there are no similar criteria in the regulations for Consents (O. Reg 197/96). The Province should clarify if there are anticipated changes to O. Reg. 197/96 that will address this, or is it meant to refer to criteria under a particular subsection under Section 53. The Province should also clarify if O. Reg. 144/95 will be repealed.