TO: Mayor and Members
General Issues Committee

COMMITTEE DATE: February 5, 2014

SUBJECT/REPORT NO: Provincial Review of Land Use Planning and Appeal System (PED14004) (City Wide)

WARD(S) AFFECTED: City Wide

PREPARED BY: Anita Fabac (905) 524-2424 Ext.1258
Jennifer Haan (905) 524-2424 Ext.1230

SUBMITTED BY: Joe-Anne Priel
Acting General Manager
Planning and Economic Development Department

SIGNATURE:

RECOMMENDATION
(a) That Council endorse the recommendations contained in Report PED14004 (Recommendations 1-23) and that staff be directed to forward Report PED14004 and its Appendices to the Ministry of Municipal Affairs and Housing as formal comments on the “Land Use Planning and Appeal System Consultation Document – Fall 2013”.

(b) That the Province be encouraged to make broad systematic changes and not simply minor adjustments to the land use planning and appeals system to achieve greater accountability in addition to greater efficiency, access and transparency for land use planning in Ontario.

(c) That the Province be requested to expand the scope of its review to include a review of Ontario Municipal Board (OMB) operations, practices and procedures, as well as alternatives to the OMB.

EXECUTIVE SUMMARY

In October of 2013, the Provincial government announced a review of the “Land Use Planning and Appeal System” and “Development Charges in Ontario”. The need for the land use planning review is the result of the number of changes made to the planning
system over recent years and continuing concerns that have been raised about parts of the system. The purpose of the land use review is to ensure that the land use planning and appeal system in Ontario is “predictable, transparent, cost-effective and responsive to the changing needs of communities”.

The Province released a Consultation Document in the Fall of 2013 intended to focus discussion on a number of key themes and specific questions (refer to Appendix “A”). The document clarifies that “recommendations that would result in a complete overhaul of the land use planning and appeal system are not being considered at this time”. A deadline for comments of January 10, 2014 was given by the Province.

This Report includes comments and recommendations for legislative and procedural changes which are of particular interest to the City. Comments dealing with the “Development Charges in Ontario” review are contained in a separate Report prepared by the Corporate Services Department (“Public Consultation on the Development Charges Act, 1997”, Report FCS14010).

Draft comments were submitted to the Province on January 10, 2014 and are attached as Appendix “B”. Once endorsed by Council, this Report and its appendices will be forward to the Province as the City’s final comments.

Alternatives for Consideration – See Page 16

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A
Staffing:  N/A
Legal:    N/A

HISTORICAL BACKGROUND

In October of 2013, the Provincial government announced a review of the “Land Use Planning and Appeal System”. The last legislative reforms of the land use planning system occurred in 2004 and 2007. Those efforts resulted in:

- clearer rules and protection of public interests;
- encouraging public participation;
- introduction of planning and financial tools; and,
- clearer rules for planning applications at the OMB.

The purpose of this current land use planning system review is to ensure that the planning and appeal system in Ontario is “predictable, transparent, cost-effective and responsive to the changing needs of communities”.

OUR Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
OUR Mission: WE provide quality public service that contribute to a healthy, safe and prosperous community, in a sustainable manner.
OUR Values: Accountability, Cost Consciousness, Equity, Excellence, Honesty, Innovation, Leadership, Respect and Teamwork.
The Province released a Consultation Document (see Appendix “A”) intended to focus discussion on a number of key themes and specific questions to guide discussion. The Document clearly states that recommendations relating to a complete overhaul of the land use planning and appeal system are not being considered at this time. Comments were due to the Province on January 10, 2014. Due to the timing of the announcement of the land use review, and release of the Consultation Document by the Province, draft comments were forwarded to the Province on January 10, 2014. Once endorsed by Council, this Report and its appendices will be forwarded to the Province as the City’s final comments.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The land use planning and appeal system is guided by The Planning Act which sets out how land use decisions are made and how they can be appealed to the OMB.

RELEVANT CONSULTATION

The Consultation Document was circulated to Senior Management Team via the Acting General Manager of Planning and Economic Development Department for comment. From this circulation comments were received from the Housing Division, Community and Emergency Services Department, and the Legal Services Division, City Manager’s Office.

In addition to this circulation, meetings were held with the following Planning and Economic Development staff and Legal Services staff to generate discussion and ideas on the themes and specific questions contained in the Consultation Document:

- Planning Division
  - Community Planning
  - Development Planning, Heritage and Urban Design
  - Planning Policy and Zoning By-law Reform
- General Manager’s Office
- Growth Management Division
  - Growth Planning
  - Infrastructure Planning
  - Construction
  - Development Engineering
- Legal Services Division

This Report and Appendix “B” contain the suggestions and comments received based on the areas of expertise of those staff consulted, and their experiences with the land use planning and appeal system.
ANALYSIS AND RATIONALE FOR RECOMMENDATION

The need for the land use planning and appeal system review is the result of the number of changes made to the planning system over recent years and some continuing concerns that have been raised about parts of the system. The purpose of the land use review is to ensure that the land use planning and appeal system in Ontario is “predictable, transparent, cost-effective and responsive to the changing needs of communities”.

According to the Province, concerns about the system have focused around four key themes:

- 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; and,
- 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.

Guiding principles from the Province include:

- A Public able to participate, be engaged, and have their input considered;
- A system that is led by sound policies that provide clear provincial direction/rules, and is also led by up-to-date municipal documents that reflect matters of both local and provincial importance;
- Communities that are the primary implementers and decision-makers;
- A process that should be predictable, cost-effective, simple, efficient and accessible, with timely decisions; and,
- An appeal system that should be transparent; decision-makers should not rule on appeals of their own decisions.

The Province has made it clear that this review will not consider a complete overhaul of the land use planning and appeal system at this time. Specifically, the review will not discuss or consider:

- Elimination of the OMB;
- The OMB’s operations, practices and procedures;
- Removal of the provincial government’s approval role;
- The restriction of the provincial government’s ability to intervene in matters; and,
- Matters involving other legislation, unless housekeeping changes are needed.

The City of Hamilton supports this initiative, however staff believe that broader changes to the land use planning and appeal system are needed. The Provincial position that a
complete overhaul of the land use planning and appeal system not be considered at this time is short-sighted. Meaningful changes to the system are needed in order to achieve the goals outlined in the various themes. Minor tweaking of the process is not enough. The review should include a thorough review of the OMB. This review should investigate whether the OMB should be eliminated, scoped or replaced with a different system. The review must look at OMB operations, practices and procedures including:

- Scheduling of hearings;
- Hearing costs and length of hearings;
- Long wait times for decisions;
- Scoping of OMB powers and what types of appeals it should be responsible for;
- Requirement for mandatory discussions between appellants and municipalities prior to appeals being filed;
- More explicit direction to the OMB to have regard for municipal decisions;
- Whether complex hearings should require a panel of two or more members;
- Ensuring consistency in OMB decisions;
- Improvements to administrative process, including a staff person to record all OMB proceedings;
- Board member appointment process/qualifications; and,
- Board member salaries and terms.

As part of this, a comparison of other models and narrowing of appeal permissions should be investigated. These suggestions are further detailed in this Report.

Recommendation 1:

The Province expand the scope of the provincial review to include the OMB operations, practices and procedures.

**Response to the Provincial Consultation Document**

The response and recommendations provided by the City of Hamilton to the Province are outlined below and are based on the four themes and questions outlined in the Consultation Document.

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

In order to achieve more predictability, transparency, accountability and cost reduction in the planning and appeal process, the City of Hamilton puts forth the following:

**Alignment of Provincial Policy documents review**

Municipalities are required to ensure that their Official Plans “conform to” or are “consistent with” a number of Provincial plans and policy documents that are issued by
various Ministries. The Niagara Escarpment Plan, Provincial Policy Statement, Places to Grow, and Greenbelt Plan were all adopted in different years and as such have different plan review dates. The Province should consider aligning the review of major Provincial policy documents to ensure they are up for review at consistent timeframes. This will better assist municipalities in keeping Official Plans up to date, and avoid situations where a municipal plan is constantly under review.

The mandatory 5-year review period for municipal documents should also be increased to a 10-year review period. This can provide more certainty and predictability into the process by extending the length of time for Official Plans to be in effect, and can align with the updates/review period for Provincial documents. In addition, there is precedent for implementing this type of change. For example, the Municipal Act, 2001 was amended to remove the requirement to review licensing by-laws every 5 years.

Recommendation 2:

The Province align the review of major Provincial plans and policy documents.

Recommendation 3:

The Province increase the mandatory 5-year review period for municipal documents to 10-years.

Limit issues that can be appealed to the OMB

The range of appeal permissions under the Planning Act hinders final implementation of municipal planning documents. The range of appeal permissions should be refined and narrowed. For example, conformity exercises which implement Provincial plans, once approved by the Province should not be appealable. A great deal of municipal resources are being allocated to defending these appeals rather than implementing policy.

The Province should also explore other ways to deal with appeals of Minor Variance and Consent applications. It should be further investigated if excessive municipal time and financial resources are being allocated to defending Minor Variance and Consent appeals at the Ontario Municipal Board. It would be beneficial to investigate this to explore if there is a more effective and efficient method to dealing with these types of appeals.

There are a number of examples of different appeal processes the Province could explore and review the current system against. For example, the graduated system of appeal utilized in the UK. The UK model gives the appellant a choice into which method of appeal they wish to pursue depending on the time and finances they wish to commit to the process. The current OMB appeal process is often seen as inaccessible to
members of the public who find it time consuming, expensive and sometimes intimidating to navigate.

Recommendation 4:

The Province refine and narrow the range of appeal permissions under the Planning Act, in particular conformity exercises which implement Provincial Plans, not be appealable.

Recommendation 5:

The Province conduct a review of the current OMB process and investigate different tribunal models for appeals to Minor Variance and Consent applications.

**Removal of appeals to entire Official Plans or Zoning By-laws**

The appeal process is too long, especially for comprehensive documents such as Official Plans and Zoning By-laws. Allowing appeals to an entire document causes significant and costly delays for the municipality, and impedes final implementation of municipal planning documents. These documents are prepared with public input and reflect a broader vision for the community. The City of Hamilton strongly agrees that appeals of an entire Official Plan and Zoning By-Law should not be allowed. The following information should be mandatory:

- The specific policy(s) being appealed;
- The grounds for the appeal;
- Alternative language proposed for the appealed polices; and,
- Identify the appellant’s interest in the policy (if not property specific).

The process of revising and updating policy through a conformity exercise implementing Provincial plans or the 5-year review is a lengthy, detailed and consultative process. The approval of the document is ultimately subject to Provincial approval. The right of appeal to an entire plan following Council adoption and approval, by an approval authority (Province), undermines the entire process.

The appeal process should require the appellant to demonstrate proof that they have engaged the municipality in a fulsome way. This will allow the municipality the opportunity to address their concerns prior to Council decision, and not use the appeal system as a means of addressing planning matters.

In addition, appellants should not have the ability to add appeal grounds after a notice of appeal has been filed.

It is recommended that stronger/clearer criteria for determining frivolous and vexatious appeals be investigated to eliminate appeals that are not legitimate planning matters.
Recommendation 6:

The Province remove the right to appeal an entire document, and that mandatory information be required as part of an appeal submission.

Recommendation 7:

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

Recommendation 8:

The Province create stronger criteria for determining frivolous and vexatious appeals.

**Removal of the right to appeal for Non-Decision**

The permission under the Planning Act to allow an appeal for non-decision should be removed or refined. Appeals for non-decision circumvent the planning process in that the public consultation aspect is removed. This negatively affects the predictability and transparency of the planning and appeal processes and renders municipalities ineffective in terms of public consultation. Municipalities are often left to answer questions on why the public was not consulted and how decisions have been made.

The Province may also wish to consider refining the permissions for appeals for non-decision in the following ways:

- Provide longer timeframes to make a decision;
- No new information should be allowed to be presented if the appeal is made under “non-decision”; and,
- Appeals for non-decision be subject to a leave to appeal motion and test. The Province should examine parallels to the Environmental Review Tribunal for leave to appeal tests and standards of review. Some elements of the leave to appeal test could include:

  (a) have all requests for further information from the applicant been complied with - often certain reports or studies are not contemplated at the application stage and are only required after information comes to light in the review of the application;

  (b) some consideration of the resources of the municipality, the volume of applications, and whether the application is being processed in a reasonable manner;

  (c) has the applicant consented to the delay; and,
(d) are the materials submitted in support of the application complete and to the municipality’s satisfaction. The latter consideration is critical because the quality and adequacy of material submitted in support of an application can often only be determined once a detailed review of those materials has commenced by the municipality and commenting agencies, which is always after an application has been deemed complete.

Approval authorities could be given the right to bring a motion to dismiss appeals for non-decision based on the considerations outlined above, in addition to any current dismissal tests in the Planning Act.

Recommendation 9:

The Province eliminate the right to appeal for non-decision, or alternatively refine the permissions for appeals for non-decision.

Extending the timeframe under which a decision must be made on Development applications

With the increase in complexity and technical information required to undertake a planning review, the prescribed timelines in the Planning Act by which a decision must be made are often too short. These tight timeframes are seen as constricting the planning process, in that planners are required to make a recommendation, and subsequently Council make a decision, perhaps without all of the correct/complete information being presented. Often times the municipality is waiting for sufficient or revised information to be submitted while the clock runs down. The 120/180-day prescribed processing period is very restrictive for the amount of work and complexity of issues that arise. In addition, it is often difficult to pursue a consensus driven outcome under these timelines.

One mechanism for achieving greater collaboration is to provide the municipality the ability to reset the 120-day or 180-day prescribed timeframe if the municipality determines that more information is required at a time after the application has been deemed complete. In order to prevent a misuse or overuse of this process, the municipality could be limited to extending the time period only once, after which the applicant could appeal to the OMB.

Alternately, the 120/180-day prescribed processing period can be lengthened to provide the additional time needed.

Recommendation 10:

The Province conduct a review of the 120-day/180-day 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. This review should investigate lengthening the timeframe or providing municipalities with the ability to restart the timeframe if additional information is deemed necessary by the municipality.

**Importance/relevance of decisions of Councils after an appeal has been filed**

The process for dealing with appeals for non-decision requires a Council to take a position after the appeal has been filed. Council provides direction to its legal counsel in-camera, and the Board has ruled that section 2.1 of the Planning Act does not apply; therefore, the Board does not have regard to Council’s decision because the decision has not been made under the Act. The Act should require that the OMB have regard to decisions of Council made after an appeal is filed. Council still receives the benefit of a staff review and planning opinion. There should be regard given to Council decisions in these circumstances.

In addition, appeals should not be *de novo* appeals. Appeals should be real appeals with a standard of review applied to the decision of the approval authority. The standard of review for real appeals should be one that ensures that if an approval authority makes a decision that is consistent with the PPS and conforms to the applicable provincial plans, it should not be appealable. One suggestion is to have a standard of review of reasonableness apply to an approval authority’s decision. After all, it’s the standard of review that applies to an appeal of an OMB decision when the OMB steps in the shoes of an approval authority.

Recommendation 11:

The Province amend the Planning Act to require that the OMB have regard to a Council decision after an appeal for non-decision has been filed.

Recommendation 12:

The Province make the necessary legislative changes to disallow *de novo* appeals.

**Requirement to consult with Council when new information is presented at OMB hearing**

In those cases where Council has made a decision on an application, then under the Planning Act, no new information is allowed to be presented at the OMB without Council having the opportunity to review the new information. However, in those cases where a matter is appealed for non-decision, then these provisions to do apply. Only information submitted to the municipality with an application should be used for the appeal. The OMB must have recognition that the new information/evidence presented could have influenced Council’s decision. In the instance that new information is presented at the OMB, the application should be required to go back to the municipality, and the
timeframe under which a decision must be made, starts over to allow for proper review of information.

Recommendation 13:

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.

Preparation of conditional zoning regulations

The Planning Act Reforms in 2006 (Bill 51) included a new voluntary planning tool to allow municipalities to zone with conditions. This new tool provides municipalities with the authority to impose zoning by-laws with conditions, provided the Official Plan contains related policies. Zoning with conditions gives municipalities the authority to require a land owner to enter into an agreement relating to the conditions, and may register the agreement against title.

Although the authority exists under the Act, the Province has yet to establish the Regulations to allow municipalities to use this planning tool. The City of Hamilton currently utilizes Holding Zones to achieve a similar outcome, however, having the ability to zone with conditions could be a useful and beneficial tool, one that would require further investigation by the municipality once Regulations are established.

Recommendation 14:

The Province is encouraged to develop a Regulation for Section 34(16) of the Planning Act.

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

Support for Council decisions

The City agrees that municipal leadership is extremely important when it comes to resolving planning issues and making local planning decisions. Having decisions rooted in approved planning policy made by municipalities in consultation with the public is vital. Municipalities need greater support of the decisions they make by the Ministry and the OMB, especially when applications under the Planning Act implement provincially approved Official Plans.

Bill 51 implemented modifications to the Planning Act which introduced the fundamental change that the OMB must “have regard” to municipal decisions. However, the wording of the Planning Act is not strong enough in requiring the OMB to support municipal decisions.
Recommendation 15

The Province amend the Planning Act to give greater strength to municipal decisions and require that OMB decisions “be consistent” with municipal decisions.

Local Appeal Bodies

The City of Hamilton is not of the opinion that the creation of a local appeal body to hear appeals for minor variances or consents, will support greater municipal leadership. The City does not support the expansion of the powers of local appeal bodies, as this would not address the issues relevant to the City. Instead, staff feel that the best approach would be to modify the existing approval and appeal process in the following possible ways:

1. Option to eliminate the Committee of Adjustment;
2. Option to delegate decisions for minor variances and consents to the Chief Planning Official or their designate, a process similar to the powers of Directors, to make decisions on environmental compliance approvals under the Environmental Protection Act. Accordingly, there would be no public hearing; views of the public would be obtained by written submission only. Any appeals on these decisions could be heard by Council or a Committee of Council; or,
3. Appeal to the OMB on error of law only.

These options would provide the City with a streamlined process for consent and minor variance applications and parallel processes that already exist and work well, pursuant to other legislation. These options would help support and encourage greater municipal leadership and local planning decisions.

Recommendation 16:

Instead of expanding the powers of a local appeal body, the Province modify and streamline the existing approval and appeal processes for minor variance and consent applications.

Mandatory Pre-Consultation/Complete Application

Currently the Planning Act gives municipalities the authority to pass a by-law to require applicants to consult with municipalities before submitting an application. However, this requirement is not mandatory. The City of Hamilton supports and requires mandatory pre-consultation for all Planning Act approvals, including site plan, with the exception of minor variances and consents. Pre-consultation provides a meaningful opportunity for open dialogue, and permits both staff and the applicant to openly discuss questions and concerns, ensure that plans/drawings are complete, and identify the need for further study or justification. It is a meaningful tool that can reduce application approval times and increase early communication, which can pre-empt adversarial tendencies.
The process can break down when multiple applications are required by the municipality, but an applicant refuses to submit one of the applications. For example, an Official Plan Amendment and Zoning By-law Amendment are required by the municipality, but the applicant refuses to submit an Official Plan Amendment. Municipalities do not have the mechanisms to deem applications incomplete if additional applications are required.

Recommendation 17:

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.

Theme C – Better engage citizens in the local planning process

Engaging Citizens – Opportunities for further consultation

The City of Hamilton wholly supports reform that aims at better engaging citizens. More engagement at the front end of the process and the elimination/reduction of appeal rights would assist in engaging citizens. In order to effectively engage citizens, the barriers/obstacles associated with the timelines set out in the Planning Act need to be reviewed. As discussed under Theme A, a substantial extension of the processing period would assist with better engaging citizens, and allow for comprehensive and more meaningful consultation. In addition, the planning process should include consultation very early on, to identify issues and opportunities in pursuit of consensus.

The Planning Act could be amended to introduce a requirement for, or discretion to require further consultation or dialogue between the applicant and interested parties. For example, following a public meeting, Council could be given the right to pause the timing of the application, for the purposes of requiring further dialogue. The clock would recommence when the matter was brought back to Council following the additional dialogue. This requirement could also be time-limited, to prevent an overuse or misuse of this discretion.

Recommendation 18:

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 application if there are outstanding issues.

Notification

A concern that the City has heard from many citizens, is that they are not made aware of planning processes and applications that are being considered by Council.
Newspaper ads are not always the best way to reach citizens, as not all receive print media, and not all print ads/NOTICES are available with online newspapers. The City does its best to reach as many citizens as it can through use of its website and local community newspapers through Council’s Public Participation Policy, however staff have heard that this is often not enough, and it is not reaching the broader public. A mail-out to all property owners can be costly, and this process only reaches registered land owners.

The requirement to give notice through other means, for example municipal websites, email, and social media should be considered. This would not eliminate the requirement to give notice in newspapers, but also require that other methods be applied. This would reach those not reached by traditional newspapers.

The Planning Act regulations state that notice shall be given to every owner of land. Homeownership is just one form of tenure. Notification should be required to be given to each and every resident within the prescribed circulation area. The City of Hamilton is supportive of stronger and more inclusive notification requirements, and recommends that the Planning Act be amended.

Recommendation 19:

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.

Citizen Input

Municipalities should be required to explain how citizen input was considered during the review of a planning proposal. The City of Hamilton currently includes this analysis in all of its staff reports to Council. As well, the Environmental Assessment process requires a thorough process for recording and responding to public comments and concerns. This process, or a similar process, could be adopted for Planning Act applications with clear guidelines that identify the information to be included and how this information is to be shared. Alternatively, citizen input could become the requirement of the applicant, to demonstrate the nature and extent of their consultation, any issues that were raised and solutions/modifications that were made to the application to address those concerns.

Recommendation 20:

The City of Hamilton supports the introduction of a formal process by the Province that would require demonstration of how public input was considered during the review of a planning/development proposal.
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

Planning horizon

Municipalities need to be given the tools to protect lands for the future, and plan for a longer horizon (beyond 2041), especially for major infrastructure projects like major sewer and water trunks and expansions to waste water treatment plants. Planning for a longer horizon is much more sustainable and efficient.

Recommendation 21:

The Province make the appropriate legislative changes to allow municipalities to plan for a 50 year planning horizon instead of 20 years.

Matters of local interest

The Ministry has been removing references in Official Plans to lands for future development, and strategic employment lands. Municipalities must be able to protect for employment lands strategically, in both the urban and rural areas. This benefits everyone. In addition, municipalities should be permitted to define in their planning documents, what uses constitute “employment”, without any right of appeal. Additionally, consideration should be given to providing greater opportunity/flexibility in the Greenbelt Plan for agri-processing uses.

It is necessary to recognize that “soft infrastructure” is also critical to the success of communities. Too often these are considered extras and of lesser importance than “hard infrastructure”. Investment in “soft infrastructure” is needed. Better Provincial Ministry co-ordination towards the same goals around all forms of infrastructure is critically important and needs to be addressed.

Recommendation 22:

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

Matters that are provincially-approved

The ability to appeal Official Plans, Zoning By-laws, or related amendments that support matters that are provincially-approved, should be removed. Planning documents approved by a Municipal Council shall be consistent with Provincial policies. Municipalities have been required to conform to these policies. Provincial Plans and policies cannot be appealed, and the same rationale should be applied to planning
documents that have been developed to implement these Provincial Plans and policies. When a decision is made at the provincial level on a planning document, and issues/concerns are raised by the public, further consultation or dispute resolution should occur at the provincial level. Approval of these documents should not be subject to appeal and a decision of the OMB (refer to Recommendation 4).

Recommendation 23:

The Province amend the Planning Act to remove the ability for Official Plans, Zoning By-laws or related amendments that support matters that are provincially-approved to be appealed, and implement a system where further consultation or dispute resolution be used, where issues are raised to the Province regarding a provincially-approved planning document.

ALTERNATIVES FOR CONSIDERATION

The Province is consulting with the public, municipalities, Aboriginal groups, community groups, the building and development industry and other stakeholders, on changes to the land use planning and appeal system. The City could forego the opportunity to provide comments to the Province on the Land Use Planning and Appeals system in Ontario.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

Strategic Objective

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #3

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

Strategic Objective

3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.
APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: Land Use Planning and Appeal System Consultation Document, Fall 2013
- Appendix “B”: City of Hamilton Response to the Provincial Consultation Document

: AF, JH
Attach: (2)
Land Use Planning and Appeal System
Consultation Document • Fall 2013
LAND USE PLANNING AND APPEAL SYSTEM CONSULTATIONS

Ontario is reviewing the land use planning and appeal system to make sure it is predictable, transparent, cost-effective and responsive to the changing needs of communities.

The Ministry of Municipal Affairs and Housing will be consulting in the fall of 2013 across the province with the public, municipalities, Aboriginal groups, community groups, the building and development industry and other key stakeholders on what changes to the system may be needed.

This document is intended to help focus the discussion.

LAND USE PLANNING AND APPEAL SYSTEM OVERVIEW

Ontario has many diverse communities, geographic landscapes, resources, populations, opportunities and challenges. Land use related decisions take into account these diversities and the need to balance a range of priorities.

Ontario’s communities are constantly changing. These changes create challenges, but also opportunities for compact growth, intensification, more efficient use of infrastructure and greater sustainability.

Our land use planning system gives us the tools and processes to manage this change so that we can build the cities and towns we want to live and work in. The planning system helps each community set goals and find ways to reach those goals while keeping important social, economic and environmental concerns in mind. It does this by balancing the interests of individual property owners with the wider interests and objectives of the community.
Well-planned communities attract jobs and support economic development. They make effective and efficient use of their infrastructure, and offer appropriate transportation choices. They address environmental and resource concerns such as rainwater runoff and soil erosion. They offer their citizens a high quality of life, opportunities for a healthy lifestyle and safe, well-serviced places to live, work and play.

The keystone of Ontario’s land use planning system is the Planning Act, administered by the province through the Ministry of Municipal Affairs and Housing. The Act sets the framework for planning and development.

Supporting these ground rules are the Provincial Policy Statement (PPS) and provincial plans, such as the Growth Plan for the Greater Golden Horseshoe, Growth Plan for Northern Ontario, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Niagara Escarpment Plan and the Lake Simcoe Protection Plan. Provincial plans provide more detailed policy directions for specific geographic regions.

The PPS is a key part of this system and is made under the authority of Section 3 of the Planning Act. It integrates all provincial ministries’ land use interests and it applies to the entire province. The PPS includes land use policies on matters like natural heritage, agriculture, transportation, housing, economic development, mineral aggregates (rock, gravel or sand used in construction) and water resources. These policies may be further detailed in provincial land use plans, which are created under various statutes. These plans provide provincial direction for specific geographic areas of the province. They address matters such as environmental conservation, growth management and economic issues. In order for these provincial policies and plans to be implemented locally, the Planning Act requires that all local planning decisions shall be consistent with the PPS, and shall “conform” or “not conflict” with provincial plans in effect.

Did you know?

Land use planning tools can be used to support a community’s sustainable planning objectives.

Key Participants

- **Province**: Province leads with legislation, policy and plans, and provides approval function where required.
- **Municipalities/Planning Boards**: Municipalities implement policies through their official plans, zoning by-laws, planning decisions.
- **Property Owners/Developers**: Planning boards provide advice and assistance to municipal councils for land use planning matters in the North.
- **Aboriginal Communities**: Opportunities for input and involvement are important parts of the system (e.g., public meetings and open houses).
- **Agencies**: System provides a process for change to most land use plans and allows most applications to be appealed to the Ontario Municipal Board as an independent body dealing with disputes.

[Diagram of Key Participants]
Within this structure, communities set out their own goals and rules in their official plans, which control how they will grow and develop. The planning system allows the public to play a key role in the planning process by giving them opportunities to review and comment on various planning matters. This is especially important in helping to shape the community vision, which the official plan seeks to achieve. Official plans are implemented through tools like zoning by-laws, site plans, plans of subdivisions, and development permits.

<table>
<thead>
<tr>
<th>Upper/Single-tier</th>
<th>Lower/Single-tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Plan</td>
<td>Official Plan</td>
</tr>
<tr>
<td>Public Meeting Consultation Decision</td>
<td>Public Meeting Consultation Decision</td>
</tr>
<tr>
<td>Zoning or DPS By laws</td>
<td>Land Division (Sub/Condo/Severance)</td>
</tr>
<tr>
<td>Public Meeting Consultation Decision</td>
<td>Public Meeting Consultation Decision</td>
</tr>
<tr>
<td>Potential Appeal</td>
<td>Minor Variance</td>
</tr>
<tr>
<td>Potential Appeal</td>
<td>Site Plan/ DPS Permit</td>
</tr>
<tr>
<td>Decision</td>
<td>Decision</td>
</tr>
<tr>
<td>Potential Applicant Appeal (Building Code Act, 1992)</td>
<td>Potential Applicant Appeal</td>
</tr>
</tbody>
</table>

Once an official plan comes into effect, it can be amended at any time. Changes may be needed to incorporate new provincial policies or allow development that the policies in the current plan do not permit. These changes occur through an official plan amendment initiated by the municipality/planning board or a private applicant. The amendment is prepared and processed in the same manner as the plan itself. In some instances the official plan may be up-to-date; however the related zoning by-law may not reflect the updated official plan.

**Did you know?**

In 2011, 45 per cent of municipalities had up-to-date official plans.
In those cases, a rezoning would be necessary to permit a development that conforms to the official plan. In addition, in order to obtain a building permit, the development must conform to zoning by-law requirements. As the needs of communities change, it is important that official plans and zoning by-laws are kept up-to-date, not only to reflect the changing needs of communities, but also to reduce the number of site-by-site amendments. By doing this, communities can reduce the likelihood of disputes that may result in Ontario Municipal Board (OMB) appeals.

The planning system also sets out timelines for decision-making on planning matters. If a decision isn’t made within these timelines, the matter can be appealed to the Ontario Municipal Board. The timelines are based on application types. For example, an official plan amendment timeframe is 180 days, regardless of whether it is a simple amendment or a complex amendment.

Land use planning often brings together a number of competing interests. Since people have different ideas about what planning and development should accomplish, disputes are not uncommon.

If an application is challenged or disputed, it can generally be appealed to the Ontario Municipal Board. The OMB is responsible for hearing appeals on matters concerning planning disputes and gets its authority to hear planning matters from the Planning Act. It is a quasi-judicial tribunal which makes legally-binding decisions independent of the government. The OMB’s authority also includes hearing disputes related to fees and amount of parkland dedication, etc.

### Decision Timelines under the Planning Act

<table>
<thead>
<tr>
<th>Application Type</th>
<th>Timeline to Trigger Appeals where Non-Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Plan Amendment for Municipal Decision</td>
<td>180 days</td>
</tr>
<tr>
<td>Official Plan/Amendment for Approval Authority Decision</td>
<td>180 days</td>
</tr>
<tr>
<td>Zoning by-law Amendment</td>
<td>120 days</td>
</tr>
<tr>
<td>Subdivision</td>
<td>180 days</td>
</tr>
<tr>
<td>Consent</td>
<td>90 days</td>
</tr>
<tr>
<td>Site Plan</td>
<td>30 days</td>
</tr>
</tbody>
</table>

### Did you know?

Almost all other provinces have boards that hear appeals from land use planning decisions. The types of land use planning matters that come before them may vary.
Ontario Municipal Board Caseload

<table>
<thead>
<tr>
<th>Files (Applications and Appeals)</th>
<th>2007/08</th>
<th>2008/09</th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Variance</td>
<td>578</td>
<td>552</td>
<td>363</td>
<td>495</td>
<td>581</td>
</tr>
<tr>
<td>Consent</td>
<td>279</td>
<td>280</td>
<td>176</td>
<td>229</td>
<td>305</td>
</tr>
<tr>
<td>Zoning By-laws</td>
<td>275</td>
<td>190</td>
<td>187</td>
<td>197</td>
<td>159</td>
</tr>
<tr>
<td>Official Plans</td>
<td>198</td>
<td>162</td>
<td>169</td>
<td>172</td>
<td>120</td>
</tr>
<tr>
<td>Zoning Refusal or Inaction</td>
<td>172</td>
<td>163</td>
<td>146</td>
<td>160</td>
<td>125</td>
</tr>
<tr>
<td>Plans of Subdivision</td>
<td>95</td>
<td>68</td>
<td>76</td>
<td>98</td>
<td>68</td>
</tr>
<tr>
<td>Municipal and Misc. (incl. site plans)</td>
<td>92</td>
<td>83</td>
<td>68</td>
<td>90</td>
<td>115</td>
</tr>
<tr>
<td>Development Charges</td>
<td>16</td>
<td>15</td>
<td>60</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>Land Compensation</td>
<td>25</td>
<td>29</td>
<td>42</td>
<td>34</td>
<td>31</td>
</tr>
<tr>
<td>Capital Expenditures</td>
<td>8</td>
<td>9</td>
<td>11</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Joint Board</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Site Plan after Nov. 15</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>1763</td>
<td>1581</td>
<td>1332</td>
<td>1494</td>
<td>1527</td>
</tr>
</tbody>
</table>

* A large number of appeals from decisions/lack of decisions of approval authorities in respect to the updating of major planning documents to implement the Growth Plan for the Greater Golden Horseshoe and PPS, led to a number of OMB files.

Did you know?

*In 2011/12, minor variances and consents made up 58 per cent of the OMB’s planning application caseload.

Did you know?

*Planning Act files received by the OMB decreased by 14% from 2007/08 to 2011/12 fiscal years.

Did you know?

*In 2011/12, the majority of the OMB caseload originated from the following areas:

- Toronto: 30 per cent
- Greater Toronto Area (excluding Toronto): 16 per cent
- Ottawa: 9 per cent

*Source: Ontario Municipal Board Annual Reports
LAND USE PLANNING REFORMS

Since 2003, the province has undertaken a comprehensive review of the land use planning system. It introduced various legislation, policies and plans such as the:

- Revised PPS, which provides direction on building stronger communities, the wise use and management of resources and protecting public health and safety;
- Greenbelt Plan, which established a permanent greenbelt of approximately 2 million acres across the Greater Golden Horseshoe to ensure the long-term protection of agriculture, natural heritage systems, water resources, recreation and tourism;
- Growth Plan for the Greater Golden Horseshoe, which was created to better manage growth in the Greater Golden Horseshoe by creating compact, complete communities, supporting a strong economy, efficiently using land and infrastructure and protecting agricultural land and natural areas; and
- Growth Plan for Northern Ontario, which aims to strengthen the economy of the north by providing a framework for decision-making and investment by both the province and local governments.

Along with these policies and plans, planning legislation and regulations have also undergone a number of major reforms. The goal of these reforms was to address concerns with how the system was working, and to build strong, prosperous communities within a healthy environment.

Some of the most recent legislative efforts to reform the system occurred in 2004 and 2007. Changes were made to:

- Provide clear rules and protection of public interests, such as:
  - requiring stronger adherence to the PPS;
  - introducing the requirement to consult with a municipality before making a planning application;
  - giving communities the authority to set out complete application requirements; and
  - requiring that planning documents be updated.

- Encourage public participation, such as:
  - enhancing public notification and requiring public open houses in some circumstances; and
  - increasing decision timelines.
Introduce planning and financial tools, such as:
- limiting ability to appeal settlement area boundary and employment land conversion;
- allowing municipalities to have architectural controls;
- enhancing development permit system (DPS) and community improvement plan provisions; and
- introducing an option for local appeal bodies to adjudicate minor variances and consent disputes.

Provide clear rules for planning applications at the OMB, such as:
- allowing repeat applications to be dismissed;
- restricting OMB decisions to matters considered by municipal council;
- dismissing substantially different applications than those originally submitted for a local decision; and
- requiring OMB to have regard for local decisions and information and materials provided to council.

The figure below provides an overview of the uptake of some of the major planning tools on a province-wide basis. These tools include:

- Complete applications – municipalities can set out what additional information beyond those set out in regulation is required when a planning application is submitted.
- Pre-consultation – municipalities can pass a by-law requiring applicants to consult with them before submitting a planning application.
- Enhanced site plan – municipalities can consider the external and sustainable design of buildings.
- DPS – a land use planning tool that combines the zoning, site plan and minor variance processes into one application and approval process.
- Employment land conversion – municipalities have the ability to have the final say on whether designated employment lands can be changed to other uses.

Did you know?
Since 2007, municipalities have had the authority to establish their own local appeal body to adjudicate specific local disputes.
CURRENT CONTEXT

Given the number of changes made to the planning system over recent years and some continuing concerns that have been raised about parts of the system, Ontario is reviewing the land use planning and appeal system to make sure it is predictable, transparent, cost-effective and responsive to the changing needs of communities.

Concerns about the system have focused around four key themes, which will be the focal point for the review:

<table>
<thead>
<tr>
<th>Theme</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theme A</td>
<td>Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs</td>
</tr>
<tr>
<td>Theme B</td>
<td>Support greater municipal leadership in resolving issues and making local land use planning decisions</td>
</tr>
<tr>
<td>Theme C</td>
<td>Better engage citizens in the local planning process</td>
</tr>
<tr>
<td>Theme D</td>
<td>Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth</td>
</tr>
</tbody>
</table>

We are interested in hearing your views on how the land use planning and appeal system is working. Any proposed new approaches or changes should consider the following guiding principles:

- the public is able to participate, be engaged and have their input considered;
- the system is led by sound policies that provide clear provincial direction/rules and is also led by up-to-date municipal documents that reflect matters of both local and provincial importance;
- communities are the primary implementers and decision-makers;
- the process should be predictable, cost-effective, simple, efficient and accessible, with timely decisions; and
- the appeal system should be transparent; decision-makers should not rule on appeals of their own decisions.

Please note that while we are interested in hearing your views, recommendations that would result in a complete overhaul of the land use planning and appeal system are not being considered at this time.
More specifically, this consultation will **not** discuss or consider:

- elimination of the OMB;
- the OMB’s operations, practices and procedures;
- removal of the provincial government’s approval role;
- the restriction of the provincial government’s ability to intervene in matters; and
- matters involving other legislation, unless housekeeping changes are needed.

Comments on issues that are not the focus of the consultation will be shared with the ministries or agencies responsible.

The government will give serious consideration to all of the comments and information received. The comments and suggestions will be used to help inform the government on what changes to the system may be needed.
ISSUES AND QUESTIONS TO DISCUSS

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

The Planning Act requires communities to update their official plans on a five-year basis, and zoning by-laws within three years of the official plan update. A common concern is that local planning documents are not updated regularly enough to reflect the changing needs of a community.

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?

Another concern is the number of times that planning documents are amended. It has been suggested that a way of achieving more predictability is to limit the number of times these are changed. It should be noted, however that a reduced ability to change documents could affect the flexibility of the land use planning system, the ability to make local decisions, and the ability to address emerging issues.

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?

Since issues are becoming more complex, and decisions on planning matters must be well informed, there are often significant costs involved in amending planning documents or seeking approvals. These increasing costs have placed pressures on municipalities, applicants and the general public to find ways to reduce costs.

It has been suggested that costs may be reduced by promoting more collaboration between applicants, municipalities and the public through the sharing and exchange of information such as resource materials and reports.

4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?
Appeals are often broad in scope and there may be many matters under appeal at the same time, resulting in long, complex and costly Ontario Municipal Board (OMB) hearings. Although the Planning Act currently requires the person or body making the appeal (the appellant) to specifically identify what is being appealed and why, sometimes the entire planning document (e.g. official plan) is appealed to the OMB by one appellant. This causes extensive appeal process delays and increases costs for the community in managing these types of far-reaching appeals.

5. **Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?**

Sometimes a matter is appealed to the OMB because a council did not make a decision within the required timeframe. In these cases, there is no time limit on when additional appeals may be filed on the same matter. As appeals continue to flow into the municipality, it can be very challenging to prepare for OMB hearings. The additional appeals result in delays in the OMB’s hearing processes, increasing costs for everyone involved.

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?**

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

The Development Permit System (DPS) is a land use planning tool that combines the zoning, site plan and minor variance processes into one application and approval process. The tool shifts the focus upfront, creating a policy-led process, which promotes strategic, integrated long-term planning and provides certainty, transparency and accountability for the community. In order to implement a DPS, a municipality must undertake the following:

- Engage the public through enhanced public consultation opportunities;
- Amend its official plan to identify DPS area(s) and set out its goals, objectives and policies;
- Identify the types of conditions and criteria that may be included in the by-law, including discretionary uses, by which applications will be evaluated;
- Enact a development permit by-law to replace the zoning by-law, which provides flexibility by specifying minimum and maximum development standards and by allowing for a specified range of variation; and
- Identify what matters may be delegated from council to staff.

When the new system was introduced during the last round of planning reforms, it aimed to streamline local planning approvals while promoting development, enhancing environmental protection and supporting key priorities such as community building, brownfield redevelopment, greenspace preservation and environmental protection. To date,
only four municipalities have adopted this tool.

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

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

Municipalities have an integral role in the local land use planning process through decision-making, preparing planning documents and ensuring a balance of wider public interests and those of their local community. Achieving collaboration and consensus is often difficult, which may result in land use planning appeals.

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

Municipalities have the authority to create optional local appeal bodies that can hear appeals on local planning disputes involving minor variances and consents. To date, no municipality has established a local appeal body.

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?**

Municipalities have the authority to pass by-laws that require applicants to consult with the municipality before they submit their planning application. There are two clear advantages to this: the municipality knows about potential development pressures and can advise the applicant if technical information or public consultation is needed.

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

In some Ontario communities, land use planning documents and decisions are made at a regional or upper-tier level, which impact lower-tier municipalities. The Planning Act requires that all lower-tier official plans conform with upper-tier official plans. At the same time, it does not prevent lower-tier municipalities from adopting amendments that do not conform with the upper-tier plan.
This causes tensions and pressures in the planning system. The upper-tier may be prematurely forced to deal with lower-tier planning matters. The premature amendments may get appealed to the Ontario Municipal Board, cluttering the appeal system and adding more costs.

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

Theme C: Better engage citizens in the local planning process

Public participation is important to the land use planning system. However, at times the public may feel the process is too difficult to access, or they may believe they lack influence in planning decisions.

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?

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

Well planned communities with good infrastructure are better able to accommodate new development and investment. Aligning the land use planning process with infrastructure investment, not only reduces costs and supports economic competitiveness, it also improves the economic well-being of the community.

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

In some cases, amendments to local planning documents are made to put in place a policy following significant public consultation, or to put in place something that’s already been provincially approved (such as Source Protection Plans). These amendments can still be appealed.
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?
SUBMIT YOUR COMMENTS AND IDEAS

You are invited to share your comments and ideas by January 10, 2014. You can:

- Share your views at a meeting or regional workshop

- Submit your comments through an online version of this guide at www.ontario.ca/landuseplanning
  Environmental Bill of Rights Registry Number: 012-0241
  http://www.ebr.gov.on.ca/

- Email a submission to PlanningConsultation@ontario.ca

- Write to us at:
  Land Use Planning and Appeal System Consultation
  Ministry of Municipal Affairs and Housing
  Provincial Planning Policy Branch
  777 Bay Street, 14th Floor, Toronto, ON M5G 2E5

Preparing an Email or Mail Submission

Please structure your submission as answers to the question listed above or submit responses in each of the theme areas.

Personal Information

Personal information you provide is collected under the authority of the Ministry of Municipal Affairs and Housing Act.

Thank you for your interest in Ontario’s Land Use Planning and Appeal System.
January 10, 2014

Ken Petersen
Manager, Ministry of Municipal Affairs and Housing
Local Government and Planning Policy Division
Provincial Planning Policy Branch
777 Bay Street
Floor 14
Toronto, ON
M5E 2E5

Dear Mr. Petersen,

Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

Thank you for the opportunity to provide comments on the Land Use Planning and Appeal System reform. 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 February 2104.

The Province should be commended for undertaking this review and consulting with municipalities and key stakeholders on these important issues. We are optimistic that this review will lead to positive change for the land use planning and appeal system in Ontario. A greater emphasis on transparency, accountability, cost-effectiveness and citizen engagement is welcomed by the City of Hamilton.

We must however, acknowledge that the Province should consider a more comprehensive review of the land use planning and appeal system in Ontario. Minor tweaking of the process will not be enough. Meaningful changes are needed in order to achieve the goals outlined in the four themes of the Provincial Consultation Document. 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. The review must look at OMB operations, practices and procedures including:
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

- Scheduling of hearings;
- Hearing costs and length of hearings;
- Long wait times for decisions;
- Scoping of OMB powers and what types of appeals it should be responsible for;
- Requirement for mandatory discussions between appellants and municipalities prior to appeals being filed;
- More explicit direction to have regard for municipal decisions;
- Whether complex hearings should require a panel of two or more members;
- Ensuring consistency in OMB decisions;
- Improvements to administrative process including a staff person to record all OMB proceedings.
- Board member appointment process/qualifications; and,
- Board member salaries and terms.

As part of this, a comparison of other models and narrowing of appeal permissions should be investigated. These suggestions are further detailed in this letter.

Thank you again for the opportunity to provide meaningful input into this review. We look forward to the results of the Provincial review. City of Hamilton staff would be pleased to meet with you to discuss these comments in greater detail. Please direct any inquiries to Steve Robichaud, Director of Planning at ext. 4281.

Sincerely,

Joe-Anne Priel
Acting General Manager

cc: Steve Robichaud, Director of Planning
    Michelle Sergi, Manager
    Anita Fabac, Senior Project Manager
    Jennifer Haan, Planner
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

RESPONSE TO THE PROVINCIAL CONSULTATION DOCUMENT AND QUESTIONS

The response and recommendations provided by the City of Hamilton to the Province are outlined below and are based on the four themes and questions outlined in the Consultation Document.

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

In order to achieve more predictability, transparency, accountability and cost reduction in the planning and appeal process, the City of Hamilton puts forth the following:

Alignment of Provincial Policy documents review

Municipalities are required to ensure that their Official Plans “conform to” or are “consistent with” a number of Provincial plans and policy documents that are issued by various Ministries. The Niagara Escarpment Plan, Provincial Policy Statement, Places to Grow, and Greenbelt Plan were all adopted in different years and as such have different plan review dates. The Province should consider aligning the review of major Provincial policy documents to ensure they are up for review at consistent timeframes. This will better assist municipalities in keeping Official Plans up to date, and avoid situations where a municipal plan is constantly under review.

The mandatory 5-year review period for municipal documents should also be increased to a 10-year review period. This can provide more certainty and predictability into the process by extending the length of time for Official Plans to be in effect, and can align with the updates/review period for Provincial documents. In addition, there is precedent for implementing this type of change. For example, the Municipal Act, 2001 was amended to remove the requirement to review licensing by-laws every 5-years.

Recommendation:

The Province align the review of major Provincial plans and policy documents.

Recommendation:

The Province increase the mandatory 5-year review period for municipal documents to 10-years.

Limit issues that can be appealed to the OMB

The range of appeal permissions under the Planning Act hinders final implementation of municipal planning documents. The range of appeal permissions should be refined and narrowed. For example, conformity exercises which implement Provincial plans, once approved by the Province should not be appealable. A great deal of municipal resources are being allocated to defending these appeals rather than implementing policy.
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

The Province should also explore other ways to deal with appeals of Minor Variance and Consent applications. It should be further investigated if excessive municipal time and financial resources are being allocated to defending Minor Variance and Consent appeals at the Ontario Municipal Board. It would be beneficial to investigate this to explore if there is a more effective and efficient method to dealing with these types of appeals.

There are a number of examples of different appeal processes the Province could explore and review the current system against. For example, the graduated system of appeal utilized in the UK. The UK model gives the appellant a choice into which method of appeal they wish to pursue depending on the time and finances they wish to commit to the process. The current OMB appeal process is often seen as inaccessible to members of the public who find it time consuming, expensive and sometimes intimidating to navigate.

Recommendation:

The Province refine and narrow the range of appeal permissions under the Planning Act, in particular conformity exercises which implement Provincial Plans not be appealable.

Recommendation:

The Province conduct a review of the current OMB process and investigate different tribunal models for appeals to Minor Variance and Consent applications.

Removal of appeals to entire Official Plans or Zoning By-laws

The appeal process is too long, especially for comprehensive documents such as Official Plans and Zoning By-laws. Allowing appeals to an entire document causes significant and costly delays for the municipality and impedes final implementation of municipal planning documents. These documents are prepared with public input and reflect a broader vision for the community. The City of Hamilton strongly agrees that appeals of an entire Official Plan and Zoning By-Law should not be allowed. The following information should be mandatory:

- The specific policy(s) being appealed;
- The grounds for the appeal;
- Alternative language proposed for the appealed polices; and,
- Identify the appellant’s interest in the policy (if not property specific).

The process of revising and updating policy through a conformity exercise implementing Provincial plans or the 5-year review is a lengthy, detailed and consultative process. The approval of the document is ultimately subject to Provincial approval. The right of
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

appeal to an entire plan following Council adoption and approval by an approval authority (Province) undermines the entire process.

The appeal process should require the appellant to demonstrate proof that they have engaged the municipality in a fulsome way. This will allow the municipality the opportunity to address their concerns prior to Council decision and not use the appeal system as a means of addressing planning matters.

In addition, appellants should not have the ability to add appeal grounds after a notice of appeal has been filed.

It is recommended that stronger/clearer criteria for determining frivolous and vexatious be investigated to eliminate appeals that are not legitimate planning matters.

Recommendation:

The Province remove the right to appeal an entire document and that mandatory information be required as part of an appeal submission:

Recommendation:

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

Recommendation:

The Province create stronger criteria for determining frivolous and vexatious appeals.

Removal of the right to appeal for Non-Decision

The permission under the Planning Act to allow an appeal for non-decision should be removed or refined. Appeals for non-decision circumvent the planning process in that the public consultation aspect is removed. This negatively affects the predictability and transparency of the planning and appeal processes and renders municipalities ineffective in terms of public consultation. Municipalities are often left to answer questions on why the public was not consulted and how decisions have been made.

The Province may also wish to consider refining the permissions for appeals for non-decision in the following ways:

- Provide longer timeframes to make a decision;
- No new information should be allowed to be presented if the appeal is made under “non-decision”;
- Appeals for non-decision be subject to a leave to appeal motion and test. The Province should examine parallels to the Environmental Review
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

Tribunal for leave to appeal tests and standards of review. Some elements of the leave to appeal test could include:

(a) have all requests for further information from the applicant been complied with - often certain reports or studies are not contemplated at the application stage and are only required after information comes to light in the review of the application;

(b) some consideration of the resources of the municipality, the volume of applications and whether the application is being processed in a reasonable manner;

(c) has the applicant consented to the delay; and,

(d) are the materials submitted in support of the application complete and to the municipality's satisfaction. The latter consideration is critical because the quality and adequacy of material submitted in support of an application can often only be determined once a detailed review of those materials has commenced by the municipality and commenting agencies, which is always after an application has been deemed complete.

Approval authorities could be given the right to bring a motion to dismiss appeals for non-decision based on the considerations outlined above, in addition to any current dismissal tests in the Planning Act.

Recommendation:

The Province eliminate the right to appeal for non-decision, or alternatively refine the permissions for appeals for non-decision.

Extending the timeframe under which a decision must be made on Development applications

With the increase in complexity and technical information required to undertake a planning review, the prescribed timelines in the Planning Act by which a decision must be made are often too short. These tight timeframes are seen as constricting the planning process in that planners are required to make a recommendation, and subsequently Council make a decision perhaps without all of the correct/complete information being presented. Often times the municipality is waiting for sufficient or revised information to be submitted while the clock runs down. The 120/180-day prescribed processing period is very restrictive for the amount of work and complexity of issues that arise. In addition, it is often difficult to pursue a consensus driven outcome under these timelines.
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

One mechanism for achieving greater collaboration is to provide the municipality the ability to reset the 120-day or 180-day prescribed timeframe if the municipality determines that more information is required at a time after the application has been deemed complete. In order to prevent a misuse or overuse of this process, the municipality could be limited to extending the time period only once, after which the applicant could appeal to the OMB.

Alternately, the 120/180-day prescribed processing period can be lengthened to provide the additional time needed.

Recommendation:

1. The Province conduct a review of the 120-day/180-day 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. This review should investigate lengthening the timeframe or providing municipalities with the ability to restart the timeframe if additional information is deemed necessary by the municipality.

Importance/relevance of decisions of Councils after an appeal has been filed

The process for dealing with appeals for non-decision requires a Council to take a position after the appeal has been filed. Council provides direction to its legal counsel in-camera, and the Board has ruled that section 2.1 of the Planning Act does not apply; therefore, the Board does not have regard to Council’s decision because the decision has not been made under the Act. The Act should require that the OMB have regard to decisions of Council made after an appeal is filed. Council still receives the benefit of a staff review and planning opinion. There should be regard given to Council decisions in these circumstances.

In addition, appeals should not be de novo appeals. Appeals should be real appeals with a standard of review applied to the decision of the approval authority. The standard of review for real appeals should be one that ensures that if an approval authority makes a decision that is consistent with the PPS and conforms to the applicable provincial plans it should not be appealable. One suggestion is to have a standard of review of reasonableness apply to an approval authority’s decision. After all, it’s the standard of review that applies to an appeal of an OMB decision when the OMB steps in the shoes of an approval authority.

Recommendation:

The Province amend the Planning Act to require that the OMB have regard to a Council decision after an appeal for non-decision has been filed.
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

Recommendation:

The Province make the necessary legislative changes to disallow *de novo* appeals.

**Requirement to consult with Council when new information is presented at OMB hearing**

In those cases where Council has made a decision on an application, then under the *Planning Act* no new information is allowed to be presented at the Ontario Municipal Board without Council having the opportunity to review the new information. However, in those cases where a matter is appealed for non-decision, then these provisions to do apply. Only information submitted to the municipality with an application should be used for the appeal. The OMB must have recognition that the new information/evidence presented could have influenced Council’s decision. In the instance that new information is presented at the OMB, the application should be required to go back to the municipality and the timeframe under which a decision must be made starts over to allow for proper review of information.

Recommendation:

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.

**Preparation of conditional zoning regulations**

The *Planning Act* Reforms in 2006 (Bill 51) included a new voluntary planning tool to allow municipalities to zone with conditions. This new tool provides municipalities with the authority to impose zoning by-laws with conditions, provided the Official Plan contains related policies. Zoning with conditions gives municipalities the authority to require a land owner to enter into an agreement relating to the conditions and may register the agreement against title.

Although the authority exists under the Act, the Province has yet to establish the Regulations to allow municipalities to use this planning tool. The City of Hamilton currently utilizes Holding Zones to achieve a similar outcome however, having the ability to Zone with conditions could be a useful and beneficial tool, one that would require further investigation by the municipality once Regulations are established.

Recommendation:

The Province is encouraged to develop a Regulation for Section 34(16) of the *Planning Act*. 
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

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

Support for Council decisions

The City agrees that municipal leadership is extremely important when it comes to resolving planning issues and making local planning decisions. Having decisions rooted in approved planning policy made by municipalities in consultation with the public is vital. Municipalities need greater support of the decisions they make by the Ministry and the OMB, especially when applications under the Planning Act implement provincially approved official plans.

Bill 51 implemented modifications to the Planning Act which introduced the fundamental change that the OMB must “have regard” to municipal decisions. However, the wording of the Planning Act is not strong enough in requiring the OMB to support municipal decisions.

Recommendation:

The Province amend the Planning Act to give greater strength to municipal decisions and require that OMB decisions “be consistent” with municipal decisions.

Local Appeal Bodies

The City of Hamilton is not of the opinion that the creation of a local appeal body to hear appeals for minor variances or consents will support greater municipal leadership. The City does not support the expansion of the powers of local appeal bodies as this would not address the issues relevant to the City. Instead, staff feel that the best approach would be to modify the existing approval and appeal process in the following possible ways:

- Option to eliminate the Committee of Adjustment;
- Option to delegate decisions for consents and minor variances to the Chief Planning Official or their designate, a process similar to the powers of Directors to make decisions on environmental compliance approvals under the Environmental Protection Act. Accordingly, there would be no public hearing; views of the public would be obtained by written submission only. Any appeals on these decisions could be heard by Council or a Committee of Council; or,
- Appeal to the OMB on error of law only.

These options would provide the City with a streamlined process for consent and minor variance applications and parallels processes that already exist and work well pursuant to other legislation. These options would help support and encourage greater municipal leadership and local planning decisions.

Recommendation:
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

Instead of expanding the powers of a local appeal body, the Province modify and streamline the existing approval and appeal processes for consent and minor variance applications.

Mandatory Pre-Consultation/Complete Application

Currently the Planning Act gives municipalities the authority to pass a by-law to require applicants to consult with municipalities before submitting an application. However, this requirement is not mandatory. The City of Hamilton supports and requires mandatory pre-consultation for all Planning Act approvals, including site plan, with the exception of minor variances and consents. Pre-consultation provides a meaningful opportunity for open dialogue and permits both staff and the applicant to openly discuss questions and concerns, ensure that plans/drawings are complete, and identify the need for further study or justification. It is a meaningful tool that can reduce application approval times and increase early communication which can pre-empt adversarial tendencies.

The process can break down when multiple applications are required by the municipality but an applicant refuses to make one of the applications. For example, an Official Plan Amendment and Zoning By-law Amendment are required by the municipality but the applicant refuses to submit an Official Plan Amendment. Municipalities do not have the mechanisms to deem applications incomplete if additional applications are required.

Recommendation:

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.

Theme C – Better engage citizens in the local planning process

Engaging Citizens – Opportunities for further consultation

The City of Hamilton wholly supports reform that aims at better engaging citizens. More engagement at the front end of the process and the elimination/reduction of appeal rights would assist in engaging citizens. In order to effectively engage citizens the barriers/obstacles associated with the timelines set out in the Planning Act need to be reviewed. As discussed under Theme A, a substantial extension of the processing period would assist with better engaging citizens and allow for comprehensive and more meaningful consultation. In addition the planning process should include consultation very early on, to identify issues and opportunities in pursuit of consensus.

The Planning Act could be amended to introduce a requirement for, or discretion to require further consultation or dialogue between the applicant and interested parties. For example, following a public meeting, Council could be given the right to pause the timing of the application for the purposes of requiring further dialogue. The clock would
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

recommence when the matter was brought back to Council following the additional dialogue. This requirement could also be time-limited, to prevent an overuse or misuse of this discretion.

Recommendation:

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 application if there are outstanding issues.

Notification

A concern that the City has heard from many citizens is that they are not made aware of planning processes and applications that are being considered by Council. Newspaper ads are not always the best way to reach citizens as not all receive print media and not all print ads/notices are available with online newspapers. The City does its best to reach as many citizens as it can through use of its website and local community newspapers through Council’s Public Participation Policy. But staff has heard that this is often not enough and it is not reaching the broader public. A mail-out to all property owners can be costly and this process only reaches registered land owners.

The requirement to give notice through other means, for example municipal websites, email and social media should be considered. This would not eliminate the requirement to give notice in newspapers, but also require that other methods be applied. This would reach those not reached by traditional newspapers.

The Planning Act regulations state that notice shall be given to every owner of land. Homeownership is just one form of tenure. Notification should be required to be given to each and every resident within the prescribed circulation area. The City of Hamilton is supportive of stronger and more inclusive notification requirements and recommends that the Planning Act be amended.

Recommendation:

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.

Citizen Input

Municipalities should be required to explain how citizen input was considered during the review of a planning proposal. The City of Hamilton currently includes this analysis in all of its staff reports to Council. As well, the Environmental Assessment process requires a thorough process for recording and responding to public comments and concerns. This process, or a similar process, could be adopted for Planning Act applications with clear guidelines that identify the information to be included and how
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

this information is to be shared. Alternatively, citizen input could become the requirement of the applicant, to demonstrate the nature and extent of their consultation, any issues that were raised and solutions/modifications that were made to the application to address those concerns.

Recommendation:

The City of Hamilton supports the introduction of a formal process by the Province that would require demonstration of how public input was considered during the review of a planning/development proposal.

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

Planning horizon

Municipalities need to be given the tools to protect lands for the future and plan for a longer horizon (beyond 2041), especially for major infrastructure projects like major sewer and water trunks and expansions to waste water treatment plants. Planning for a longer horizon is much more sustainable and efficient.

Recommendation:

The Province make the appropriate legislative changes to allow municipalities to plan for a 50 year planning horizon instead of 20 years.

Matters of local interest

The Ministry has been removing references in Official Plans to lands for future development and strategic employment lands. Municipalities must be able to protect for employment lands strategically in both the urban and rural areas. This benefits everyone. In addition, municipalities should be permitted to define in their planning documents what uses constitute “employment” without any right of appeal. Additionally, consideration should be given to providing greater opportunity/flexibility in the Greenbelt Plan for agri-processing uses.

It is necessary to recognize that “soft infrastructure” are also critical to the success of communities. Too often these are considered extras and of lesser importance then “hard infrastructure”. Investment in “soft infrastructure” is needed. Better Provincial Ministry co-ordination towards the same goals around all forms of infrastructure is critically important and needs to be addressed.

Recommendation:
Subject: Comments from the City of Hamilton on the Provincial Consultation on the Land Use Planning and Appeal System

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

Matters that are provincially-approved

The ability to appeal official plans, zoning by-laws, or related amendments that support matters that are provincially-approved should be removed. Planning documents approved by a Municipal Council shall be consistent with Provincial policies. Municipalities have been required to conform to these policies. Provincial Plans and policies cannot be appealed and the same rationale should be applied to planning documents that have been developed to implement these Provincial Plans and policies. When a decision is made at the provincial level on a planning document and issues/concerns are raised by the public, further consultation or dispute resolution should occur at the provincial level. Approval of these documents should not be subject to appeal and a decision of the OMB (refer to Recommendation 4).

Recommendation:

The Province amend the Planning Act to remove the ability for official plans, zoning by-laws or related amendments that support matters that are provincially-approved to be appealed, and implement a system where further consultation or dispute resolution be used where issues are raised to the Province regarding a provincially-approved planning document.