SUBJECT: Bill 51 An Act to Amend the Planning Act and the Conservation Land Act, and Proposed Regulations (PED06421) (City Wide)

RECOMMENDATION:

(a) That Report PED06421 regarding Bill 51 An Act to amend the Planning Act and the Conservation Land Act, and proposed Regulations, be received for information; and,

(b) That the Clerk be directed to forward a copy of Report PED06421 to the Ministry of Municipal Affairs and Housing, the Minister of Municipal Affairs and Housing, all local Members of Provincial Parliament, and AMO, as the City’s formal response to Bill 51 and proposed Regulations.

EXECUTIVE SUMMARY:

This report highlights the proposed reforms to the Planning Act and the Ontario Municipal Board (OMB), and provides comments on potential impacts to the City of Hamilton. Significant changes include provisions for Complete Applications, Appeal Rights, Local Appeal Boards, Increased Public Consultation, and Urban Design. Generally, these reforms are intended to implement provincial policy and support sustainability, intensification, brownfield redevelopment, and transparency in the planning process.
For the most part, staff supports the changes to the Planning Act as proposed in Bill 51 as they implement some of the reforms recommended in the "Report of the GTA Task Force on OMB Reform", which was supported by Hamilton Council as a member of the Task Force. Furthermore, Bill 51 will provide some tools that will assist the City in implementing Places to Grow.

This report also highlights and provides comments on proposed Regulations released to date that will implement Bill 51.

**BACKGROUND:**

Bill 51 which received first Reading on December 12, 2005, and second Reading on April 26, 2006, makes numerous amendments to the Planning Act. Changes to the Act will not become effective until the Bill receives Royal Assent, which is anticipated to be in early 2007.

Bill 51 culminates a series of unprecedented planning reform which will substantially change the culture of the planning and development process. Recent provincial initiatives respecting the planning framework include:

- The Greenbelt Act 2005 and Greenbelt Plan
- The Places to Grow Act 2005 and Plan 2006
- Bill 26 – The Strong Communities act 2004
- New Provincial Policy Statement
- Clean Water Act

The 'goals' of Bill 51 are to:

- Provide additional tools for stimulating intensification and promoting sustainable development;
- Provide tools for brownfield redevelopment and supporting intensification;
- Promoting energy efficiency, green design, transit and pedestrian friendly design;
- Provide for a transparent and accessible land-use planning system;
- Shift requirements for complete information, consultation and decision making to earlier in the process; and,
- Make the OMB more efficient, transparent and accessible.

Implementation of the Bill will be through 44 sets of revised or new Regulations. To date, 8 have been prepared and were posted on the EBR on July 4, 2006, and include the following:

- Transition;
- Complete Application/Content of OPs;
- Zoning with Conditions;
- Community Improvement Plans;
- Enhanced Public Record;
- Local Appeal Bodies;
In the absence of complete details, it is difficult to comment fully on the effect of the Bill. In this regard, staff will further report to Committee once all the draft Regulations are released for comment and Bill 51 receives Royal Assent. The EBR deadline for comments is October 2, 2006. Accordingly, staff has forwarded a copy of this report to MMAH staff, subject to Council ratification.

MMAH staff organized 7 workshop-type meetings with key stakeholder organizations for purposes of assisting Provincial staff in the drafting of several of the new regulations. The Regional Planning Commissioners of Ontario (RPCO) was represented at each of these meetings by members of the Development Directors of Ontario (DDO), which is chaired by the City’s Director of Development and Real Estate. A ‘SUMMARY OF CONSULTATION WORKSHOPS’ was prepared by the DDO and is attached as Appendix “A”. Many of their recommendations have been incorporated into the proposed regulations.

ANALYSIS/RATIONALE:

Bill 51 provides for several significant changes to the Planning Act, which for the purposes of this report, have been categorized into two principle themes (OMB Reform and Planning Process) as set out below. Where applicable, a description and commentary is provided for any related proposed Regulation.

OMB REFORM

- Decisions of Councils and Approval Authorities

City Council previously endorsed the recommendations in the Report of the GTA Task Force on OMB Reform dated March 7, 2003. The Task Force recommended that the OMB process should be a true appeal of the municipal planning decision and not an automatic hearing de novo.

Section 2.1 of the Bill provides that when the OMB makes a decision it “shall have regard” to any decision made by a municipal Council.

Comment:

This amendment will have little impact on OMB decision-making for Hamilton. In representing the City’s interests before the OMB, legal staff always put the local decision-making record (i.e. Council’s decision and the staff report/studies/agency comments) before the Board. This information is made an Exhibit at the OMB Hearing. In being aware of it, the Board fulfils its obligation to “have regard to” it. This requirement does not alter the Board’s jurisdiction to decide a case on the evidence presented to it at the hearing, and effectively maintains the current hearing de novo.
**Policy Statements and Provincial Plans**

Subsections 3(5) and (6) are revised to require that all planning decisions, comments, submissions or advice (municipal and provincial) “shall be consistent with” and “shall conform with” provincial policies and plans (e.g. Greenbelt Plan, Places to Grow Plan, PPS).

**Comment:**

This section will change a longstanding practice of the OMB to apply the planning policy as it existed on the date a Planning Act application is made. The Section applies to Provincial Policy documents only. Any new policies that come into force after an application is made must be applied if in force at the time of decision-making. This recognizes that planning visions are under constant review and change.

This new direction to consider planning policy existing at the time of decision-making should be extended to municipal official plans as well. This would avoid the scenarios where municipalities plan for change but can’t implement it given the timing of a Planning Act application.

**Local Appeal Body (LAB)**

Municipalities that meet prescribed requirements will have the power to establish a LAB that would deal with certain local planning matters. The ability to establish a local appeal body is not mandatory. If established, the appeal body could hear appeals from Committee of Adjustment decisions on Consents and Minor Variances.

The proposed Regulation would set out requirements for the establishment, constitution and operation of LABs. The proposed content of the Regulation is as follows:

**Establishment of LAB**

The proposed requirements are that planning documents (Official Plans and Zoning By-laws) be up-to-date and conform to any Provincial Plans, and be consistent with Provincial Policy Statements, and that they be established by By-law.

**Comment:**

Matters of concern for the City of Hamilton are who is going to make this determination and why is this a requirement, considering that the OMB currently hears appeals where planning documents are not up-to-date.
Proposed Term and Qualifications

Length of term for appointment to a LAB is a maximum of 5 years, with staggered appointment terms if there are multiple members.

Comment:

The concern is that there is no minimum number of members required. Clearly, more than 1 member should be a requirement considering that a member may have a conflict of interest. The proposed requirement for staggered terms for multiple members is supportable.

The listed qualifications: demonstrated understanding of the provincial land use planning process, the Planning Act and local planning and development matters; demonstrated problem solving and writing skills; ability to listen and communicate clearly and effectively; and understanding of the role and function of quasi-judicial tribunals are generic.

Comment:

The concern is that there is no mention of ‘training’ which should be provincially led in order to provide for consistency across the Province, and who is responsible for providing legal advice to members of the LAB (City Solicitor or Province).

Proposed Eligibility Criteria for LAB Members

Basic criteria including requirement to submit a summary of qualifications; must be of voting age; must be a resident of the municipality; and must be a ratepayer of the municipality.

Proposed Restrictions for LAB Appointment

Limitations on agent representing land use planning matters before the OMB or Committee of Adjustment, and cannot be a member of a current Provincial tribunal.

Comment:

It appears then that a sitting Councillor, ex-Councillor, and a municipal employee would all be eligible for appointment to a LAB which, for purposes of transparency, would be inappropriate. Accordingly, the proposed restrictions for LAB appointment should be expanded. An option for ex-Councillors and former municipal employees would be to impose a cooling-off period (ex. Minimum 1 year).
Rules of Practice and Procedure for LABs

In addition to the Statutory Powers and Procedures Act, the other specified rules of practice and procedure in the Regulation (e.g. notices and format for notices of hearing; procedures at the hearing; etc.) appear to be based on current OMB procedures which should allow for consistency across the Province.

Comment:

The functioning of a local appeal body would require municipal funding. Based on the number of Consent and Minor Variance OMB Hearings between 2001 and 2005, it is anticipated that there would be approximately 15 – 20 hearing days/year for the appeal body. The nature of the hearing would likely not be any different than that before the OMB now. The only difference would be that the municipality would fund its functioning (e.g. support staff, decision-makers, etc.) which may preclude the establishment of a LAB.

Restrictions on OMB Appeals

Section 10(6) of Bill 51 introduces amendments to prohibit private appeals to the OMB on:

(1) the removal of employment lands. This represents an extension of Bill 26 (previous Planning Act amendment) which prohibited private appeals to alter settlement area boundaries, and establish new settlement areas. It reinforces a new Provincial Policy established by the Places to Grow Plan, which prohibits private applications for redesignation of ‘employment land’ for retail, residential, institutional and other land uses; and,

(2) second suites (accessory dwelling) policies and by-laws.

Appeals on these matters are limited to the five year review period for Official Plans.

Comment:

The retention and creation of shovel-ready industrial land is a priority under the City of Hamilton’s Economic Development Strategy. In this regard, staff supports the restriction on private appeals respecting the removal of employment lands. However, by requiring City Council to continually revise the Official Plan policies dealing with areas of employment every five years, the overall objective of land retention could be jeopardized.

Although staff supports the foregoing restrictions on private appeals, we are concerned that it is too limited in scope and should have been expanded to include restrictions on appeals of mandatory municipal Official Plan designations and policies to implement Provincial Plans (e.g. Greenbelt and Places to Grow). Given our experience to date, staff is particularly concerned about the potential
New Evidence at Hearings

Several sections of the Bill create a detailed process restricting the evidence that parties can put forward at an Ontario Municipal Board hearing. The evidence must have been before a municipal Council at the time a decision was made. If it wasn’t, in addition to other options, the Board may remit the entire matter back to the municipal Council, with the new evidence, for report back to the Board.

Comment:

While this regime attempts to encourage full information before the local decision-maker, staff anticipates functional problems: delay and the limiting of ratepayer participation. Delay will be inevitable. Parties, including the City, ‘build’ their cases before the Board with evidence that was not directly before Council at the time of its initial decision. The Board will not be able to automatically accept this additional evidence. In the case of ratepayer groups, rarely are these groups sufficiently organized to have all their evidence for presentation at the Public Meeting stage. This will prove problematic to these groups in trying to introduce evidence later in the process before the OMB. The result will often be delay in the decision to put the new evidence back before municipal Council.

It is also anticipated that this restriction on evidence will impact the Public Meeting process by requiring more time for Planning and Economic Development Committee meetings. Clearly, proponents will want to ensure that all of their planning justification and supporting documentation/studies (e.g. Traffic Impact Studies, Market Studies, Environmental Impact Studies, etc.) are entered into the record of the Public Meeting so that they can be introduced as evidence at an OMB hearing, should the matter be appealed to the Board.

The proposed Regulation respecting Prescribed Timeframe for New Information Before the Board would give municipal Council 30 days to reconsider its decision on a plan of subdivision, Official Plan or Zoning application, based on new information and material, and make a recommendation to the OMB.

The adequacy of this timeframe is questionable, especially where the municipality does not have the expertise on staff to review the new information/material and may require a peer review to be undertaken. The logistics of retaining a peer reviewer, having the peer review completed, and scheduling the matter for Planning and Economic Development Committee and Council reconsideration within the prescribed 30 days would be difficult. Accordingly, it is recommended that the proposed Regulation be amended to prescribe a minimum of 90 days to provide staff, Planning and Economic Development Committee, and Council adequate opportunity to review the new information and to properly align with Committee and Council meeting schedules. Alternatively, the proposed regulation should be amended to prescribe a
minimum 30 days and allow the Board to prescribe a longer timeframe for reconsideration based on the complexity of the new information/material and a submission from the municipality.

- Other Matters

Other OMB reforms include restricting who may appeal to organizations and individuals who participated in the decision-making process; imposing a 20-day appeal period where Council refuses an application, whereas there is currently no time limitation on such appeals; and enhancing the authority of the Board to dismiss appeals such as repeat applications, all of which is intended to promote local autonomy and decision making.

Comment:

No issue(s).

PLANNING PROCESS

- Matters of Provincial Interest

Matters of Provincial Interest in Section 2 of the Act (e.g. the adequate provision of a full range of housing; the protection of agricultural resources of the Province) have been amended to add “the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.”

Comment:

No issue(s).

- Transition

Section 27 of the Bill sets out the Minister’s authority to make regulations for transitional matters. In this regard, under the proposed Transition Regulation, the proposed new provisions of Bill 51 would apply to all applications made on or after the date the legislation comes into effect. The date of proclamation would be the date of transition and only ‘new’ applications would be under the new Act. Commenced applications would be allowed to ‘go forward’.

Comment:

No issue(s).

- Contents of Official Plan

Section 16(1) of the Act is amended by authorizing the Minister to prescribe additional content in an Official Plan. In Ontario, the planning process is led by
Provincial interest and policy. In this regard, the Province can set mandatory Official Plan content through Provincial Plans (e.g. Greenbelt), and there is no process for municipal notification or input on the enactment of Minister’s regulations.

The proposed Regulations addressing *Content of Ops* and the information and materials developed in *Preparation of Ops* is as follows:

**Content of Official Plans**

It is proposed that the following additional matters are to be included in an OP:

- land use schedules;
- identification of definitive settlement area boundaries, where applicable;
- performance monitoring policies measuring the implementation of the PPS, applicable provincial plan(s) and OP policies;
- identification of the planning period for the OP; and,
- requiring the metric system to be used where measurements are included in the OP.

**Comment:**

With the exception of performance monitoring all of these matters are currently included in our new OP documents. With respect to performance monitoring, the concern is what does this mean and what would the municipality be required to monitor? As Hamilton’s Vision 2020 performance monitoring experience confirms, an effective monitoring process is limited by the quality and timeliness of data which can be effectively linked to policy objectives and outcomes which can be quite obscure at the local municipal level. More significantly, most municipalities, including the City of Hamilton, do not have the staff resources and data base investment necessary to effectively monitor policy implementation on an on-going basis.

In the absence of more detailed information, potential impacts on staff resources cannot be evaluated. Regardless, the need for a Regulation on this is not supportable as the approval authority (i.e. Ministry or Upper Tier Municipality) should be able to ensure that the *Planning Act* requirements, applicable provincial plan policies and PPS are implemented. Alternatively, the Province should consider a ‘Guideline’ rather than a Regulation to specify minimum content of Ops.
Preparation of Official Plans

The proposed Regulation prescribes the following additional materials to be provided to the approval authority (e.g. Ministry) in the course of preparing an OP:

- background studies and reports to demonstrate consistency with the PPS and conformity with (or not in conflict) provincial plan(s);
- housing, population, employment and land supply forecast; and,
- requiring the metric system to be used where measurements are included in the OP.

Comment:

As per the preceding comment, the requirement for a Regulation on this is not supportable as the approval authority (e.g. Ministry, Upper Tier Municipality) should be able to ensure that consistency with the PPS and conformity to provincial plan(s) are achieved without the need for background studies and reports. These requirements would be onerous and costly for the municipality.

• Public Open Houses

Bill 51 provides for changes to public consultation by requiring Council to hold at least one ‘Open House’ in addition to and prior to the statutory Public Meeting. The purpose of the ‘Open House’ is to give the public an opportunity to review information and ask questions early in the process. The ‘Open House’ is to be held at least seven days before the statutory Public Meeting.

Comment:

Additional costs for this process including notices, information, and staff overtime for attendance at night meetings will impact the Department’s and Clerk’s Operating Budgets, and will likely result in an increase in application fees.

In this regard, the City of Hamilton pre-circulates applications to the public in accordance with Council’s Public Participation Policy, which was adopted on May 29, 2003. To date, this policy has been very effective in engaging the public early on in the planning process. This has enabled staff to identify and address public concerns in the preparation of reports for the Public Meeting. In addition, it is common practise for the respective Ward Councillor and/or applicant to hold a neighbourhood information meeting on contentious applications in advance of the Public Meeting. Clearly, this practice is consistent with the intent of the Province in proposing mandatory ‘Open Houses’. Accordingly, it is recommended that the proposed Regulation be amended to allow for equivalent alternative procedures.
Enhanced Public Record

The proposed Regulation addresses the need for enhanced ‘public record’ and proposes that the following information and material be added to existing public record requirements, where applicable, which would be forwarded to the approval authority and/or OMB in the case of an appeal to the OMB:

- an affidavit or sworn declaration of an employee of the municipality or planning board certifying that requirements for the giving of notice and the holding of at least one 'Open House' have been complied with;

- additional information required as part of a complete application, including when it was submitted;

- a copy of any written summaries of oral submissions made at a Public Meeting, where it is provided by the presenter;

- a copy of those written submissions and comments received prior to Council’s decision;

- a copy of the minutes of the Public Meeting, including the names of presenter, if any;

- the decision of the municipal Council or the approval authority;

- a statement indicating how the decision of Council is consistent with the PPS and conforms or does not conflict with applicable provincial plan(s) that are in effect; and,

- copy of municipal staff report/justification report.

Comment:

Two of the foregoing matters are of primary concern. Firstly, the requirement for “a copy of any written summaries of oral submissions made at a Public Meeting, where it is provided by the presenter.” The regulation should require the presenter to provide written material supporting their position. Secondly, the requirement to provide “a statement indicating how the decision of Council is consistent with the PPS and conforms or does not conflict with applicable provincial plan(s) that are in effect.” This may be difficult to do, especially where Council over-turns a staff recommendation. Who will prepare the statement and/or if need be, defend it at the OMB? Also, these new requirements may impact Clerks Operating Budget and staff resources.
• **Updating Planning Documents**

Currently, the *Planning Act* requires municipalities to hold a special Public Meeting every five years to determine whether or not the Official Plan needs to be updated. Section 26 of the Act is rewritten to clarify the requirement to update official plans every five years with respect to provincial plans, matters of provincial interest, policy statements, and employment lands. It also requires municipalities to update Zoning By-laws within three years of revising the Official Plan.

**Comment:**

These requirements to maintain current planning documents will impact staff resources and budgets as each future change in Provincial policy or interpretation would normally require a mandatory response in the five year update of the Official Plan.

• **Community Improvement Plans**

The thrust of the changes is to introduce participation by upper-tier municipalities in the Community Improvement Plan. As a single-tier municipality, this has no material effect on the City of Hamilton. Other provisions include plans and policies for energy efficient uses and buildings to account for environmental remediation. The changes are not perceived to affect CIP related functions in downtowns and BIAs.

The proposed Regulations would prescribe upper-tier municipalities and upper-tier matters (e.g. regional transportation corridors; regional infrastructure) for Community Improvement Planning.

**Comment:**

The City of Hamilton is not impacted by this proposed Regulation.

• **Regulation of Density**

The Bill clarifies that municipalities’ power to regulate the density of development includes power to regulate minimum and maximum height, and minimum as well as maximum density. Council has adopted both minimum and maximum height regulations in the new Downtown Zoning By-law. The new “Places to Grow Plan” sets mandatory minimum densities for future suburban area development which may exceed those densities currently set out in approved secondary plans.

**Comment:**

These changes will assist the City in implementing new minimum density requirements set by “Places to Grow”, implementing future actions on
'intensification' matters and in achieving growth management objectives (e.g. GRIDS).

- **Zoning with Conditions**

Bill 51 would authorize municipalities to impose prescribed conditions as part of a zoning approval, provided that their OP contains relevant policies. Under the proposed Regulation, the conditions would need to be fulfilled and/or contained in a registered agreement on title of the land prior to the issuance of a building permit for the development. Proposed prescribed conditions include measures that:

- are identified in studies completed prior to enactment of the Zoning By-law (e.g. noise attenuation measures – on and off site);

- relate to the adequate provision of permitted hard services (e.g. water, waste, energy);

- provide for energy conservation and alternative energy provisions (e.g. district energy);

- mitigate development impacts affecting public health and safety (e.g. noise attenuation measures);

- secure land dedication for road widening;

- ensure the orderly development of land, buildings and structures (e.g. phasing requirements);

- relate to performance criteria being met prior to building permit issuance and/or any on-going monitoring or maintenance requirements tied to a registered agreement;

- promote the maintenance, restoration or improvement of the diversity and connectivity of natural features and long-term ecological function and biodiversity of natural heritage systems;

- protect and enhance heritage, archaeological and cultural resources that maintain landscapes, buildings or structures;

- relate to open space (e.g. restrictions on impervious surface coverage);

- relate to the provision of transportation and public transit infrastructure (e.g. intersection improvements, traffic signals);

- relate to the provision of parking (e.g. execution of an agreement securing off-site parking spaces); and,
- provide assessment and remediation of contaminated land (e.g. brownfield site clean up).

Comment:

As a ‘voluntary tool’, this is supportable given the limitations of Site Plan control. It would allow a municipality to require and secure similar development conditions to a plan of subdivision. Issues that may arise include whether or not conditions established under a By-law would be subject to minor variances, and the impact of on-going covenants on the legality of use (i.e. does use become illegal due to non-compliance with conditions).

- Urban Design

Section 41 of the Act respecting Site Plan Control is amended to provide municipalities with authority to review Architectural/Exterior Design. This will include the “character, scale, appearance and design features of buildings and their sustainable design”, provided the requirements for same are included in the Official Plan and the Site Plan Control By-law. These changes are supportive of actions taken by the City of Hamilton to encourage a higher level of urban design.

Comment:

The City of Hamilton has recently undertaken a number of initiatives that will provide a foundation for implementation of this authority, including the New Downtown Zoning By-law, Heritage Character Zone Design Guidelines, which were passed by Council on March 22, 2006, and the Site Plan Guidelines, which were adopted by Council in November 2003.

With respect to ‘sustainable design’, this is directed towards improving the environmental quality and sustainability of buildings which could include design elements such as ‘green roofs’ and preservation of vegetation.

Where there is a dispute about the scope of Site Plan control related to design, an appeal can be made to the OMB whose decision if final.

- Complete Applications

Bill 51 provides authority for municipalities to require applicants to “provide any other information or material that the Council considers it may need” (e.g. servicing report) before processing an application, provided the Official Plan contains provisions relating to the requirements. This authority is consistent with the following recommendation from the Report of the GTA Task Force on OMB Reform, as supported by Hamilton Council:
“Amend the Planning Act to create a definition of “complete application” that includes information and documentation required by a municipality to properly process the application and make an informed decision. The information required to constitute a complete application will include:

1) any requirements of general application contained in municipal planning documents (e.g. Official Plan); and,

2) any other information reasonably required to make a sound planning decision on that specific application.

A municipality could reject an incomplete application.”

Under the proposed Regulation, the following new information and material in support of an application would be required:

- a planning justification report demonstrating that the application is consistent with the PPS 2005; conforms to, or does not conflict with, the applicable provincial plan or plans; and conforms to municipal Ops;

- any technical reports or studies to meet the PPS or provincial plan(s) requirements;

- reports or studies related to the adequacy of infrastructure and noise attenuation; and,

- identification of related planning applications.

Comment:

From the City’s perspective, the minimum support for all applications is a planning justification report and pre-servicing report which are identified in the proposed Regulation. One issue not addressed at this stage is how confirmation of ‘clock starting’ on applications is to be determined. In this regard, it should be when all the requisite studies have been submitted.

- Early Consultation

The effect of these new provisions is to authorize municipalities to require applicants to pre-consult before submitting applications.

Comment:

Planning staff has pro-actively encouraged pre-consultation to the point where it is the norm. In this regard, the Development Review Committee routinely schedules pre-consultation meetings with the development community.
• Energy Projects

Currently, Section 62(1) of the Planning Act exempts Energy Undertakings by the Ontario Power Generation or Hydro One that are approved under the Environmental Act from planning approvals (e.g. Zoning, Site Plan). Bill 51 introduces a new section to the Act (62.0.1), which would exempt public or private sector Environmental Assessment Undertakings for energy, from Planning Act approvals (e.g. Zoning, Site Plan).

Comment:

In the absence of the Regulations, staff’s concerns relate to the types of energy undertakings that may be exempt, such as wind farms and waste incinerators for the production of energy, and land use compatibility and environmental impact issues. For example, projects such as Liberty Energy, which was recently considered by Council as a site-specific rezoning, could potentially be exempt from the planning approvals process.

Another example of the potential affect of this amendment is a wind turbine. Category A projects, which are expected to have minimal environmental impacts, do not require approval under the Environmental Assessment Act (e.g. wind turbines < 2MW). For comparative purposes, the wind turbine located on the CNE grounds in Toronto produces less than the maximum 2MW and would, therefore, be exempt from Planning Act approvals.

Several other municipalities within the GTA have also expressed concern over this proposed amendment. In this regard, Halton Region has recently prepared a report on this issue which provides greater detail on the requirements for energy projects, and is attached as Appendix “B”.

At a minimum, such projects should be made subject to site plan control.

• Development Permit System (DPS)

The DPS is a land use regulation that combines zoning, site plan and minor variance approvals into one process, and is intended to expedite application approvals. Under current legislation only five geographic areas within the City of Toronto, City of Hamilton, Region of Waterloo, Town of Oakville and Township of Lake of Bays are designated for a pilot DPS.

Bill 51 amends Subsection 70.2 (5) of the Planning Act respecting the DPS. Effectively, the province is revisiting the DPS as only the Lake of Bays out of the five municipalities that has advanced the system.

The proposed Regulation provides for a series of technical and substantive amendments that clarify the intent of the regulation and change the regulation by expanding the scope. These amendments include the following:
- permit conditions that are reasonable for the appropriate use of the land;

- permit the use of Section 37 (Bonusing) of the Planning Act to secure public benefits / services in exchange for increased height and density;

- enabling municipalities to use enhanced complete application requirements;

- enabling municipalities to regulate the external design details of buildings;

- enabling province wide application of the DPS;

- makes a clear distinction between the terms ‘criteria’ and ‘conditions’;

- permit registration of conditions from a development permit on title.

Comment:

The foregoing changes enhance the value of the DPS as a ‘voluntary tool’, which may have beneficial application for brownfield development.

FINANCIAL IMPLICATIONS:

In the absence of all the proposed Regulations it is difficult to assess the financial implications of the proposed changes to the Planning Act. However, if Council were to implement a Local Appeal Body for minor variance and consents, additional funds and staff resources would be required. The requirement for Open Houses and Enhanced Public Records would also impact the Planning and Economic Development Department and Clerks staff resources, and Operating Budgets, and would likely result in increased application fees. The Province’s requirement for municipalities to regularly update planning documents (i.e. Official Plan every 5 years and Zoning By-law every 3 years) and introduce mandatory reporting on planning performance would also impact staff resources and budgets.

RELEVANT CONSULTATION:

- Legal Services.

CONCLUSION:

Overall, the City’s position on the proposed Bill 51 Regulations should be one of support, subject to the comments/recommendations set out in the Analysis/Rationale Section of this report. Clearly, this support will be tempered by the final content of the regulations.

: PDM:
SUMMARY OF CONSULTATION WORKSHOPS
WITH MINISTRY OF MUNICIPAL AFFAIRS & HOUSING
AND
STAKEHOLDER GROUPS
ON
PROPOSED REGULATIONS FOR
BILL 51, AN ACT TO AMEND THE PLANNING ACT
AND
THE CONSERVATION LAND ACT

Submitted by the Development Directors of Ontario (DDO)
to the Regional Planning Commissioners of Ontario (RPCO)

Tim McCabe
Chair, DDO

May 12, 2006
SUMMARY OF CONSULTATION WORKSHOPS WITH MMAH AND STAKEHOLDER GROUPS ON PROPOSED REGULATIONS FOR BILL 51

(1) Introduction:

With the first reading of Bill 51 in the Legislature in December 2005, followed by second reading in April 2006, the Province of Ontario continues to move forward with its Planning/OMB reform agenda.

An essential and critical component to the new legislation includes new or revised regulations to help effect the proposed reforms. A total of 44 revised or new regulations are required to be drafted and passed. These are summarized in the table provided by MMAH included as Appendix “A”.

MMAH organized 7 workshop-type meetings with key stakeholder organizations for purposes of assisting Provincial staff in the drafting of several of the more major new regulations. RPCO was represented at each of these meetings by members of the Development Directors of Ontario.

The subject of each of the meetings and DDO attendees are as follows:

March 8: Overview session/pre-meeting
  (Tim McCabe, Hamilton; Brian Bridgeman, Durham)

  (Brock Criger, Peel; Paul Belton, York)

March 22: Zoning with conditions; energy projects that would be exempt from Planning Act approvals; and Development Permit System
  (Tim McCabe, Hamilton; John Fleming, London)

March 30: Notice requirements in relation to Official Plans, Zoning By-laws and Plans of Subdivision; minimum requirement of what would form the public records; and Transition.
  (Augustine Ko, York; Doug Stanlake, London)

April 5: Community Improvement Plans
  (Brenna MacKinnon, Waterloo; Nancy Mott-Allen, Halton)

April 12: Local Appeal Bodies
  (Brian Bridgeman, Durham; Mike Mallette, York)

April 20: Zoning with Conditions
  (Tim McCabe, Hamilton)
Ministry staff advised that the main components and directions for Bill 51 regulations will be posted on the Environmental Bill of Rights (EBR). The timing of when this information will be posted and the length of the comment period have yet to be determined. It is still unclear what level of detail will be posted; just the intent and principles of the regulation or the draft regulation itself.

With regard to the timing of Bill 51, MMAH staff is not certain when it will be passed. The timing of the start of the Standing Committee Hearings is also uncertain, at the time of preparing this report.

Appreciation and thanks to Audrey Bennett, Ron Glenn and their staff at MMAH should be extended by RPCO for the opportunity given to us to participate in these important sessions.

(2) **Position/Recommendations of DDO:**

We are generally in support of all the initiatives of Bill 51 as the more planning tools municipalities have available to use, the more innovative we can be in dealing with unique situations and creating better communities. This full support obviously must be cautioned by how the regulations will be finally drafted.

Exceptions to this support, however, include:

- Exemptions for all Energy Projects. (See Appendix “B”, Region of Halton’s report summarizing issues)
- Mandatory Open Houses/2\(^{nd}\) Public Meetings for all zoning applications, no matter how minor.

The introduction of the authority to create Local Appeal Bodies in place of the Ontario Municipal Board for appeals to Committee of Adjustment applications also has had concerns raised by DDO members. However, as this is a voluntary, optional choice for municipalities to use, we do not oppose the Province continuing to put appropriate new regulations in place for this.

The only other area of “moderate” concern expressed by some of our members was the regulation setting out minimum standards for Official Plans. A guideline issued by the Ministry for this may be a more appropriate alternative.

(3) **Summary of Workshops:**

(a) **Regulation for Complete Applications:**

- The development industry wanted the Regulation to include a requirement for an action by the municipality that would confirm that the “clock had started” on their applications. They argued that applications should be confirmed to be complete by municipalities after
developers submitted the application form, application fee and supporting studies that were listed in an approved Official Plan.

- Discussion concluded that complete applications should address the Planning Act, Sections 2 & 3 and approved Official Plans.

- We agreed that municipal Official Plans should continue to list all of the studies that can be required, with a statement that individual studies may be waived by the municipality where it is appropriate to do so.

- There was no agreement that municipalities should provide confirmation that the clock had started on development applications, rather, where completeness of an application is in dispute, developers could bring a motion to the OMB to confirm completeness of their application, and start the clock. The flip side of that argument is that no new information or studies can be brought before the Board on appeal. This seemed satisfactory to all.

- MMAH staff was firm on the point that it was the Government’s intention to get all of the information that municipalities and the general public need in order to make a decision submitted up front at the start of the planning process.

- DDO reps provided the suggestion that, at minimum, a preliminary servicing report and planning justification report should accompany every application.

(b) Regulation for Minimum Content of Official Plans:

- Ministry staff noted that Official Plans across Ontario varied widely. Some Official Plans do not include land use schedules, a table of contents or glossary of terms. They asked our group whether a regulation should be considered to set minimum standards for Official Plans. They noted that citizen groups that they had consulted would be in support of this kind of Regulation.

- The Ministry’s proposal for minimum content may include such matters as:
  - O. P. Format (Table of Contents, Glossary of Terms, Land Use Schedule)
  - Incorporation of policies related to planning tools (site plan, bonusing, road widenings)
  - Require the delineation of specific land uses as defined (i.e. intensification areas, employment lands)
o Require monitoring policies

o Require OP’s to address PPS, Provincial Plans.

- The group disagreed and did not support a Regulation. We advised MMAH staff that the approval authority – either the Ministry or upper tier municipalities – could ensure that OP’s met the Planning Act s. 2 & 3 requirements, incorporated Provincial Plans where these exist and were consistent with the 2005 PPS through the approval process.

- Our group recommended that MMAH consider a Guideline instead of a Regulation to specify minimum contents for Official Plans.

(c) Development Permit System:

- The Province’s objective is to “revisit” the entire development permit system as the pilot projects for the 5 municipalities empowered to use the system under Ontario Regulation 246/01 were not advanced with the exception of Lake of Bays. Municipalities choosing not to proceed with the Development Permit System were Hamilton, Oakville, Toronto and Region of Waterloo municipalities.

Considerations for New DP Regulation:

- Intent of development permit system (PPS) is to provide for the merging of zoning, site plan and minor variances into one “package”.
- Intent of PPS is to shift the policy and general parameters of zoning to the front-end and then deal with the detail through the development permit system.
- Enable province-wide application.
- Clarify terms used (“criteria”, “condition”).
- Permit conditions that are reasonable for the appropriate use of land.
- Provide a mechanism similar to bonusing under Section 37 to secure community facilities.
- Enable the use of enhanced, complete application requirements.
- Allow greater flexibility for design matters.

Issues Raised:

- Regulations will need to clarify the terms used in the legislation – what are meant by conditions and criteria that would guide DP approval?

- There is no appeal process relating to DP approval. This could present a problem – community may have concerns relating to the detailed DP issues.
• Development community is very concerned that conditions relating to DPS may be unreasonable and municipalities may attempt to secure community facilities and services that are not reasonably associated with the development proposal before it.

• Conditions or parameters of zoning within a DPS context must be reasonable for the appropriate use of land.

• There needs to be a thorough analysis of how the DP process is working in the “test” communities before we move forward with province-wide application of DPS.

• There is very positive potential for using DPS within an intensification context.

• Is there a need for DPS when bonusing is a tool already available to municipalities to achieve the same ends? There was follow-up discussion as to how the DPS process is different in that it addresses the parameters around acceptable zoning upfront and leaves the details to later stages.

(d) **Notice Provisions:**

• Could include web posting notice of Public Meetings.
• Bill 51 proposes new Open Houses.
• One notice could inform of both Open House and Public Meeting.
• Proposes to add railway companies and Parks Canada to parties getting notice.
• Notice should contain clarifying statement regarding new appeal rights and procedures.
• Important to inform public that one must submit written comments or attend Public Meeting in order to appeal an application; attendance at an Open House is insufficient.

(e) **Open Houses:**

• Intent is to information the public at the beginning of the planning process in an informal setting.
• Much discussion by public and private sector representatives regarding need, associated costs, format and timing of Open Houses.
• Should permit the municipal Councils to decide whether OPA or subdivision warrants an Open House.
• Municipal staff and consultants should be present at Open Houses.
• Will add substantial cost to process (municipal and consultant).
• Cost will be transferred to applicant.
• Should not have to hold Open Houses for every rezoning and subdivision application.
• Two tier municipal structures can hold joint Open Houses.
• Open Houses could be like Public Meetings with multiple applications.
• Major overtime/cost issues for municipalities.

(f) Public Meeting Notices (Subdivisions, Minor Variances, Consents):

• Proposes to include web postings.
• Proposes to add railway companies and Parks Canada to parties getting notice.
• Not much change from current requirements.

(g) Notice of Refusal:

• Should contain:
  - purpose and effect
  - date
  - explanation for the refusal
  - date of appeal period
  - who could appeal
• Debate over whether or not reasons for Council’s decision should be documented.
• Concluded that Councillors are not judges: decisions are not required to be justified.
• Concern over limiting OMB evidence due to reasons given in notice.
• Cannot always summarize rationale in a notice.

(h) Notice Requirements for Public Record:

• “Beefing-up” of public record of meetings, reports referenced, etc., will be required. OMB will need this record.
• Who participated in all meetings; OMB needs to know this.
• Regulation should require that persons making oral submission should also provide written material supporting their position and reference all studies submitted or used in forming the basis of their position.
• Council’s decision should be consistent with PPS and need “proof” of this.
• This cannot always be achieved. For example, if Council disagrees with staff
• Decisions are sometimes political motivated.
• Need to remove some public information: name, address, telephone numbers.
• Names and addresses from direct mailing lists of notices are confidential.
(i) **Transition:**

- Big question – what to capture in transition.
- Cannot require Open House if Public Meeting has already occurred.
- Should not require new technical matters like Open Houses, notice of refusal, public record to be transitioned.
- Date of proclamation may not be date of transition.
- Not all applications that have commenced will be allowed to go forward.
- Some may have to proceed under new Act (applications to convert employment lands, etc.).
- Some delegates thought all commenced applications should be allowed to go forward under old Act and only new applications should be under new Act.
- Transition policies should be kept as “simple” and understood as possible.
- Policies must complement existing transition policies.
- Certain types of applications should proceed on a “Go Forward” basis and honour previous public commitments made.
- Several of DDO’s members want transition provisions for “employment land” appeals being applied retroactively to date of 1st reading of Bill 51.

(j) **Community Improvement Plans:**

What Activities Should be Included for Upper Tier CIP’s:

- Suggestions included inter-regional transportation initiatives, infrastructure (new or upgrading of old to accommodate infill), affordable housing.
- There was a lively discussion about the use of the word “affordable” and it was suggested that the term be dropped as it relates to community improvement because it has a negative connotation; affordability could be defined in municipal housing strategies or other documents.
- MMAH suggested allowing transit corridors and adjacent lands but the consensus was the “adjacent” should not be defined in the regulation.
- Groundwater and brownfields were also discussed; it was felt that groundwater protection would be handled through the OWRA.

**Should CIP’s be Required:**

- It was suggested by AMO that if CIP was such a good tool, that municipalities should be required to undertake them.
The Bar Association suggested that municipalities should be required to do a certain number of CIP's in a given period of time.

The Counties countered by saying that some municipalities would like to participate but cannot afford to offer incentives.

Conclusion was that CIP would continue to be an optional undertaking.

**What Infrastructure should be Involved:**

- Should include water, sewer and roads.
- Trails, heritage protection.
- Septage treatment.
- Renewable energy, district heating, geothermal energy.

**Conflict between Upper and Lower Tier:**

- Generally speaking, it was indicated that the upper and lower tiers would be able to work co-operatively and that no special conflict resolution mechanism would be necessary as consultation exists as long as a clear role for Regional CIP’s was established.

- Early consultation, joint steering committees were recommended for the development of CIP’s.

- Some comments were made about the Province needing to fund affordable housing and that downloading has created some negative feelings.

- MMAH suggested that through more pre-zoning of properties, conflict relating to future land uses would be resolved prior to the CIP process.

- It was suggested that more promotional material for CIP’s should be developed by the Province to demonstrate the effectiveness of CIP areas and also more use of visualization with Councils and residents so that the effect of community improvement could be pictured using local examples.

**Local Appeal Bodies:**

- The regulation for “Local Appeal Bodies” (LABs) will be a new regulation, i.e. not an amendment to an existing relation.

- LABs are a voluntary authority for minor variance and consent appeals.
• The regulation will provide details and guidelines on the establishment of LABs.

• LABs were discussed by the group under the following five headings: i) Conditions for Establishing LABs; ii) Terms and Qualifications; iii) Eligibility Criteria; iv) Rules of Practice and Procedure; and v) Administrative Matters.

Conditions for Establishing LABs

• What conditions must a municipality meet prior to establishing a LAB? For example:
  - up-to-date Official Plan
  - up-to-date Zoning By-law
  - documents consistent with the PPS and in conformity with provincial planning documents (e.g. Greenbelt Plan, Growth Plan)
  - demonstrated staffing and administrative capability.

Discussion:

• The big concern with LABs expressed around the table was related to the financial impacts arising from the need for extra staff and resources. It was suggested that only the large wealthy municipalities would be able to afford having an LAB. The operating costs will be prohibitive for many municipalities, especially small and rural municipalities. It is highly unlikely that the province will subsidize LABs.

• The idea of a cost recovery model for LAB appeals was discussed. It was generally agreed that such a model would not be appropriate. There is a principle that the right to launch an appeal should not be cost-prohibitive.

• Some felt that once an LAB is in place, there will be a tendency for more applicants to appeal their decisions, i.e. they may be less intimidated with this forum than they would be by going to the OMB.

• A concern of the development industry is to ensure that LABs not be seen as an extension of Council. LABs will need to be seen as being independent and at arms length from Council. However, since Council appoints LAB members, it may not always be possible to escape the suggestion that they are not independent of Council.

• LABs will have to be able to withstand judicial review, which is a further reason for them to be free of bias and Council influence. There will need to be rules to ensure honesty and transparency.
• To ensure high quality decisions requires a certain type of member.

• The following questions will need to be addressed: Will LAB decisions set precedent? Can LABs award costs? Will LAB hearings be “de novo”, or will it be a true appeal body? Would the province be willing to step in on matters of provincial interest? In making decisions, what weight will be given to the Committee’s decision?

• With regard to the requirement to have an up-to-date ZBL, who will decide what constitutes “up-to-date”? (Also, Regions do not have ZBLs). Why should having up-to-date planning documents even be a criteria? In the case of Board hearings for example, the evidence is the evidence, and in making its decisions, the Board may or may, or may not be dealing with up-to-date planning documents. Why should it be any different for LABs?

• Perhaps it would be more relevant as a criteria if the municipality’s Official Plan was required to contain policies that speak to the role and procedures of the LAB, and address how appeals will be handled?

Terms and Qualifications:
(i.e. length of appointment and qualifications for LAB members)

• How many members should LABs have? Certainly more than one, even in small municipalities where only a small number of appeals are anticipated. It is conceivable, for example, that a member may have to declare a conflict. If the intention is to have staggered terms of appointment relative to the Council term, here again, several LAB members may be necessary. There was general agreement that a member’s term of appointment should be staggered relative to the Council term.

• There should be rigorous training for LAB members. Presumably, the LAB member training program would have to be developed and led by the Province to ensure consistency. Would LAB members be suitably qualified to determine if appeals are frivolous and/or vexatious? The Province would also need to develop performance measures for evaluation and annual reviews.

• If LAB members are part-time (presumably), would hearings have to be held at night (i.e. if the member has a day job)? What if the hearing is complex? The member may have to do a lot of reading in advance of the hearing. As well, imagine the implications of trying to conduct a complex hearing at night from, say, 7:00 pm to 10:00 pm for 5 nights. The logistics would be very difficult for everyone involved.
• Where would the member get legal advice, from the municipality’s lawyer? That could be a conflict.

• It is expected that developers will wait to see how LABs perform. The representative from UDI suggested developers may start to favour the rezoning process given that they are more familiar with the OMB appeal process, and may not have confidence in the LAB process.

Eligibility Criteria:

• Who should, or should not, be eligible for appointment, e.g. a landowner, business owner and/or resident of the municipality. Should there be an age restriction? The group felt that a sitting Councillor should not be allowed to be an LAB member.

• There was a general feeling that an ex-Councillor could be considered for LAB membership, but preferably after a minimum one-year cooling off period from Council.

• Member appointments should be conditional on successful completion of training?

Rules of Practice and Procedure for LABs:

• What should the new regulation contain relative to practice and procedure? There was a suggestion that the requirements of the Statutory Powers and Procedures Act may be sufficient. Wouldn’t it be easiest to adopt the OMB’s procedures, tailored for minor variances and consents? This approach would ensure consistency across the Province for matters such as the filing of materials, pre-hearings, etc.

• Should the reg. establish timelines for setting hearing dates and issuing Decisions? Should there be rules with respect to written decisions?, i.e. the decision needs to provide reasons, more than simply saying that the application meets the four tests.

• Concern was expressed about using the municipality’s procedural by-law, as it would not enable the LAB to be seen as being sufficiently independent from Council, and may create other difficulties, e.g. presentations limited to five minutes.

Administrative Matters:

• What, if any, admin matters should be outlined in the regs, e.g. budget process, member appointments, staffing. What is the provincial interest that needs to be found in the regs?
• Should the reg set out the criteria for termination? It was suggested that the document confirming the member's appointment would also govern matters of termination.

• Can a LAB member be sued over a decision? These matters should be addressed similar to the way in which they are addressed for OMB members.

• Overall, because of the cost issue, the feeling around the room seemed to be that the use of LABs will not be widespread.

(1) **Exemption for Energy Projects:**

The new regulation needed for this relates to Section 62 of Bill 51:

“An undertaking or a loss of undertakings within the meaning of the Environmental Assessment Act that relates to energy is not subject to this Act if,

(a) it has been approved under Part II or Part II.1 of that Act or is the subject of,

(i) an order under Section 3.1 or a declaration under Section 3.2 of that Act, or,

(ii) an exempting regulation made under that Act; and,

(b) a regulation under Clause 70(h) prescribing the undertaking or class of undertakings is in effect”.

The Legislation, if approved as is, would exempt from The Planning Act all energy related undertakings that:

(1) Have been approved, or are subject to an order, declaration or exemption under the EA Act; and,

(2) Are prescribed by a LGIC regulation under the Planning Act.

A regulation is being drafted to deal with site-specific undertakings relating to energy or particular classes of undertakings related to energy. *(Note: Ontario Hydro already exempted under Planning Act)*

This component of Bill 51 and the associated regulation being developed has created the most concern by RPCO member municipalities as well as most workshop group participants.
Concerns of the workshop group included:

- That the Planning Act should not be sacrificed by this exemption. Even site plan approval with relevant site design considerations, noise attenuation, impact on neighbours, etc., would not be reviewed/approved.

- Wind turbines, at a smaller scale and if regulated under the Building Code Act, may be acceptable as an exemption but a concentration of “wind farms” should be considered, zoned and approved under Planning Act.

- Currently, wind turbines producing less than 2 mega watts are not subject to EA the Act, and with the Planning Act exemption contemplated, would thus not be subject to any approvals. (Note: Large wind turbine at Toronto in CNE grounds only produces 750 kw!)

- Appeal rights will be dramatically changed under Bill 51; minimal local Council involvement.

- Municipalities will be left “out in the cold” and Minister should have regard for Council decisions.

- 99 percent of “Bump-Up” requests under EA Act have been denied, or not followed through in the past.

- Energy projects should have regard for other provincial documents such as PPS, Niagara Escarpment Plan, Greenbelt Plan, etc.

- MOE Guidelines for noise are not suitable to be applied to wind turbine noise (i.e. “tonal” noise).

- New announcement by government to permit all persons to sell excess power from private energy facilities to the Power GRID may create excessive numbers of turbines built everywhere with no approvals required.

Recommendations/Suggestions of Workshop Group included:

- Energy related to waste disposal plants should not be exempted.
- Concentration of wind turbines (wind farms) should not be eligible for Planning Act exemption.
- Building Code Act needs amendment to require permits for wind turbines to ensure safety.
- Projects should be exempted only on a site-specific basis.
- Total prohibition/exemption is not reasonable.
Private sector projects should, at a minimum, not be exempt from S41, Site Plan Approval, or regulations in the Zoning By-law (setback, height, etc.).

If government insists on proceeding with this exemption, the regulation should just prohibit Zoning By-laws from prohibiting the use itself, but regs in zoning still would have to be complied with.

Possibly regulation should exempt energy projects only in Rural Areas of the municipality, but not Urban areas.

(m) **Zoning with Conditions**:

This is an amendment to Section 34 of The Planning Act and provides municipalities with a new tool, a “voluntary” tool. Bill 51 requires specific Official Plan policies detailing the types of conditions, situations or categories that will allow municipality to enact Conditional Zoning By-laws.

The Minister of Municipal Affairs has the power to make a regulation prescribing what types of conditions would be eligible.

**Guiding Principles:**

- Should be some limitations on conditions.
- Should be a broad range to be effective
- Care must be taken in the use of zoning with conditions as conditions must be able to be satisfied clearly.
- Conditions should be reasonably related to development to which it is being applied.
- Conditions must be set out in the By-law, up front.

**Types of Conditional Zoning By-laws:**

It is envisioned that there would be two types of by-laws and effects.

(1) Conditions tied to issuance of building permit where these would represent “Applicable Law” and permit could not be issued until all have been satisfied. This would be similar to draft plan approval for plans of subdivision where conditions need to be met/cleared prior to final approval (plan registration).

(2) Ongoing, covenant-type conditions that need to be maintained or continually applied to the lands. These would be implemented through incorporation into an agreement with the municipality, to be executed and registered on title as a “pre-condition” to the issuance of the building permit. Conditions of these types would typically be related to ongoing performance management (example, maintaining buffer strips in natural vegetation adjacent to ESA’s/Wetlands).
Differences Between “Holding By-law” and Conditional Zoning:

Holding By-laws and Conditional Zoning both require specific Official Plan policies pertaining to use of holding or range of conditions. These are both subject to appeals to the OMB by all parties.

Both types of by-laws are Section 34 Zoning By-laws, require Public Meetings, notice, etc., and both can be appealed to the OMB by all parties.

Removal of “H” requires by-law amendment, notification and must be removed prior to building permit issuance. Failure to remove “H” or Lifting “H” can only be appealed by applicant.

No further Council/OMB action required with the use of zoning with conditions. Conditions satisfied or agreement executed/registered to obtain building permit.

It is interesting to note that the working groups at both the March 22 and April 20, 2006 sessions saw very few situations where a Holding By-law would be used, once the new conditional zoning comes into force.

One aspect that may fall within the regulation being developed was the comment from Ministry staff that conditions established under a Section 34 Conditional Zoning By-law would not be eligible to be varied under minor variance powers of Section 45. This resulted in some concern being expressed to Ministry staff. DDO members do not agree with this proposal.

The use of conditional zoning, as a voluntary tool, is very much supported by our group. As we move forward with intensification, we need additional powers/conditions similar to subdivisions. Section 41, Site Plan, may not be sufficient. Also, conditions such as road widening conveyances as a condition to permit issuance for a single detached dwelling, where site plan approval cannot be required, can be very useful.

It must be clearly understood though that conditional zoning will not be able to be used in a way that supersedes other legislation. For example, site plan approval by the municipality as a condition of a pit/quarry Zoning By-law.

Example of Official Plan Policies:

Conditions may be placed on lands where the ultimate desired use of lands is specified but development cannot take place until conditions as set out in the Plan or Zoning By-law are satisfied.
Such conditions may include matters relating to:

- Transportation or servicing improvements.
- Natural vegetation, preservation of open space.
- Green roofs.
- Environmental protection, remediation or mitigation measures. (i.e. landscaping, flood proofing, noise attenuation).
- Provision of services.
- Protection of heritage.

- Result or Recommendations contained in professional or technical studies to assess potential development impacts such as traffic, soil conditions, protection of site features, environmental constraints, design features.

**Note:** Merely referencing the completion of a certain report as a condition of zoning is not appropriate. Need to specify results that must be performed/completed.

- Phasing of development to ensure logical, orderly development of land.
- Architectural and site design requirements.
- Performance monitoring criteria.
- Measures to protect heritage/cultural landscape/archeological features.

**Examples of possible Conditions:**

- 20 percent of lot must be left in impermeable surface.
- Southerly 20 metres of site must remain capped for ensuring continued, effective site remediation.
- Grading plan approval for single detached, infill development.
- Conveyance of 3.5 metre road widening.
- Noise attenuation for site plans for residential developments.
- Phasing of development tied to opening of new highway or funding allocated in capital budget approved by City Council.
- Road access permit issued.
• Physical plant capacity for sewage treatment increased with certificate issued by MOE.

• Acoustical plans for residential development adjacent to airport certified by acoustical consultant.

• Agreement requiring triple-pane windows and central air conditioning and registered on title.

• Conditions for golf courses; operations for performance such as fertilizing, max strength of application, where you spray, what time of year spray is used.

Other Issues Raised:

• UDI is concerned about the fact that there will be new requests for contributions from developers but no associated compensation. This is in contrast to bonusing which provides some form of compensation for requested contributions associated with a development.

• UDI also expressed concern that there could be many conditions applied relating to safe and healthy communities – e.g. the requirement that new hospital facilities be constructed to support the proposed development. This, it was pointed out, conflicts with the philosophy of providing such services through development charges.

• Concern that this tool could be abused by municipalities.

• Questions relating to apply conditions relating to the post-approval operation of a use (i.e. ongoing covenants). For example, could a use be permitted only if trees are retained on an ongoing basis adjacent to a stream corridor? How would this reasonably be enforced? How would you remedy an infraction? Would a municipality take away the use that is already established?

• Concern that we should not be doing “social engineering” through the use of conditional zoning – and if conditions are not clearly limited, this could happen. It is not appropriate to use conditional zoning to address social issues.

• A suggestion was made that if an item is covered under the Municipal Act, then it should not be an item covered under conditional zoning

• Conditions could be insurmountable with the intent of issuing a default refusal of certain land uses.
• Conditions have to be easily quantifiable – need to be able to clearly meet the conditions

• We should not be setting up a situation whereby the use that is approved becomes illegal at some point in the future due to zoning conditions.

• Counter-argument that conditional zoning allows all stakeholders to add value to development and mitigate impacts of development.

• Conditional zoning could help with respect to design considerations. How would it relate to Section 41 and the limitations that this Section currently has? Can conditional zoning augment issues identified under Section 41 to secure design amenities?

• Question how conditional zoning could relate to the Environmental Protection Act and a waste transfer station.

• Suggestion that there needs to be a balance of the demands on the developer by the municipality and the contributions made by the municipality to the developer.
Appendix "B" to Report PED06421  
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THE REGIONAL MUNICIPALITY OF HALTON

Report To:    Chairman and Members of the Planning and Public Works Committee
From:        Peter M. Crockett, P. Eng., Commissioner of Planning & Public Works
Date:        March 9, 2006
Re:          Bill 51 – Planning and Conservation Land Statute Amendment Act, 2005:
              Section 23, Exempting Energy Undertakings from the Planning Act
Report No.:  PPW63-06

RECOMMENDATION

1. THAT further to the Joint Submission on Bill 51 – Planning and Conservation Land Statute Amendment Act, 2005 (PPW30-06), the Ministry of Municipal Affairs and Housing be requested to amend Section 23 of Proposed Bill 51 by including the provision that all energy undertakings, with the exception of those currently exempted from the Planning Act, must comply with Section 34 (Zoning By-laws) and Section 41 (Site Plan Control) of the Planning Act.

2. THAT Regional Council direct staff to include in the Region’s Multi-Year Work Plan, as identified in Report PPW15-06, the examination of electricity generation and distribution requirements to support future growth needs.

3. THAT the Regional Clerk forward a copy of Report PPW63-06 to the Local Municipalities for their information and appropriate actions.

REPORT

Purpose

The purpose of this report is to address the concerns raised over proposed Section 23 of Bill 51 - Planning and Conservation Statute Law Amendment Act, 2005 and to identify a process for establishing a policy framework to guide the location of future energy and other major undertakings.
Background

At its meeting of March 1, 2006, Council received Report PPW30-06, Halton’s Joint Submission on Bill 51 – Planning and Conservation Land Statute Amendment Act, 2005. Bill 51 is one component of the overall planning changes that the Province has introduced in an effort to manage the growth (4 million more people) in the Greater Golden Horseshoe Area over the next 30 years.

Bill 51 introduces, among other things, new planning tools to strengthen implementation of provincial policies and municipal priorities and to improve administration of the planning processes. Section 23 of Bill 51 (or Section 62 of the current Planning Act) proposes that an undertaking related to energy that has been approved, or exempted under the Environmental Assessment Act, be exempt by regulation from the Planning Act. Energy Undertakings by the Ontario Power Generation (OPG) or Hydro One that are approved under the Environmental Act are already exempt from the current Planning Act (Section 62(1)). Section 23 of Bill 51 would allow new public or private sector energy projects to be exempted from the Planning Act through regulation. This could be accomplished in several ways. The Lieutenant Governor in Council (LGC) could establish a regulation that prescribes a class of undertakings that is exempt from the Planning Act or the LGC could identify a specific undertaking within the regulation that is exempt from the Planning Act. The exact nature and content of the regulation will not be known until it is released.

Concerns Regarding Section 23

In its report dated February 16, 2006, the Niagara Escarpment Commission (NEC) recommended that Section 23, exempting energy applications from the Planning Act process, be deleted from Bill 51 because of the visual and environmental impacts that such energy facilities could have on the Niagara Escarpment. The NEC expressed concern that there are different tests under the Environmental Assessment Act and the Planning Act which should be considered in the evaluation of undertakings. By exempting energy undertakings from the Planning Act processes, the NEC feels that energy facilities would not be evaluated appropriately.

Concerns of Other Municipalities

Other municipalities within the GTA have also expressed concern over Section 23 of Bill 51:

Region of York

York Region recommends that only exemptions reflecting wording similar to that used in the Greenbelt Plan, 2005 i.e. renewable “green” energy systems, such as wind and solar power generation and transmission facilities, should be considered. York Regional staff recommended a comprehensive review of the regulation prior to its approval and that the exemption be limited to renewable “green” energy systems such as wind and solar power generation and transmission facilities that have been approved under the EA process as a first step.

The City of Toronto

The City of Toronto noted that the possibility of a blanket exemption would not address legitimate local interests, especially with respect to matters, such as additional local environmental impacts, zoning by-law regulations and site plan control. Toronto staff will closely monitor the development of any draft regulations to implement the legislative change.
Region of Peel
Peel Region feels that the municipal planning approvals should not be circumvented as they relate to zoning and site plan control.

Environmental Assessment Requirements for Electricity Projects

In 1998, the Province enacted the Electricity Competition Act to introduce full competition into Ontario's electric system and create a level playing field with respect to regulatory requirements and maintaining and enforcing its standards for environmental protection in a competitive electricity market. Historically, the Environmental Assessment Act applied only to public sector projects and did not automatically apply to private sector projects. To fulfill its commitment to maintaining environmental protection while creating a level playing field, changes were needed to the Environmental Assessment Act. As a result, the Ministry of the Environment developed new environmental assessment requirements for electricity projects which apply equally to public and private sector proponents.

The "Guide to Environmental Assessment Requirements for Electricity Projects" classifies electricity projects based on the type of fuel used, the size, (and in some cases) the efficiency of the planned facility. The classification of electricity projects is set out in the "Electricity Projects Regulation".

Category A projects, which are expected to have minimal environmental impacts, do not require approval under the Environmental Assessment Act (EAA) (e.g. transmission lines <115 KV, wind turbines < 2MW and landfill gas/biogas <25 MW). However, they must still comply with other applicable legislative requirements including those under the Planning Act (e.g. zoning, site plan approval). It should also be noted that anyone can request the Minister of Environment to make a Category A project subject to the Environmental Assessment Act.

Category B projects are designated as subject to the EAA but are exempt on the condition that they fulfill the requirements of the Environmental Screening Process (ESP). All projects that are subject to the ESP go through the "Screening Stage" which requires the proponent to apply a series of screening criteria to identify any potential environmental effects of the project. Through the screening process, the proponent must answer a series of questions based on the screening criteria to identify any potential negative effects on the environment. The questions are organized under the categories of: Surface and Ground Water, Land, Air and Noise, Natural Environment, Resources, Socio-economic, Heritage and Culture, Aboriginal, and Other.

Included in the questions the proponent must answer are - Will the undertaking:
- have negative effects on residential, commercial or institutional land uses within 500 metres of the site?
- be consistent with the Provincial Policy Statement, provincial land use or resource management plans?
- be consistent with municipal land use policies, plans and zoning by-laws?
- have negative effects on locally important or valued ecosystems or vegetation?
- have negative effects on heritage buildings, structures or sites, archaeological resources or cultural heritage landscapes?
- have negative effects on scenic or aesthetically pleasing landscapes or views.
If the proponent answers yes to any question, he/she must provide additional information and analysis in the screening report to describe the effects, identify the mitigation or impact management measures to prevent or reduce effects and assess the significance of any remaining net effects.

Under the screening process, proponents are expected to consult with relevant federal and provincial agencies and municipal authorities, qualified people, potentially affected and interested individuals in the public to ensure the identification of potential effects, and proposed mitigation measures.

The Final Screening Report is made available for public agency review and if a person or agency has an outstanding concern that cannot be resolved, then there is the ability to make a written request to the Director of the Environmental Assessment and Approvals Branch, MOE to elevate the project to either an Environmental Review or an Individual EA.

The ESP also recognizes that approvals are required under other statutes including the Planning Act. These approvals (e.g. Official Plan Amendment, zoning amendment, etc.) can take place in parallel with and coordinated and combined with the ESP.

A category B project would have to proceed to the Environmental Review stage of the ESP if there are significant environmental effects or issues that warrant more detailed study; the proponent received substantive public or agency comments/concerns about the Screening Report conclusions; or The Director of the EAAB receives a substantive elevation request from the public or government agencies. At the Environmental Review stage, the proponent is required to prepare an Environmental Review Report (ERR) which satisfactorily assesses and addresses all negative environmental effects and addresses unresolved concerns. The ERR is approved if there are no requests to elevate the project.

Finally, Category C projects are major projects (e.g. transformer stations over 500 kV, Hydroelectric facilities equal or greater than 200MW, Municipal solid waste facility that incinerates more than 100 tonnes/day municipal waste) that require an Individual Environmental Assessment. Category C projects not exempted from the Planning Act, would be required to comply with other legislation including the Planning Act.

Addressing the Planning Concerns

Staff responded to the concerns over Section 23 of Bill 51 in a memo to Council dated February 23, 2006. Staff suggested that Council recommend to the Ministry of Municipal Affairs and Housing that a sub clause be added to Section 23 of Bill 51 indicating that an energy undertaking cannot be exempted from the requirements of both the Environmental Assessment Act and the Planning Act.

The current environmental processes for electricity projects ensure that the different categories of projects must comply with the Planning Act. Even the smaller Category A projects, which are considered to have the least environmental impact, must comply with the processes of the Planning Act. While the larger Category B Projects go through a vigorous ESP process, they must meet the requirements of other statutes including the Planning Act, which can be undertaken at the same time as the ESP. The large Type C electricity projects are also required to comply with the processes of the Planning Act (if they are not currently exempted from the Planning Act).
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After further review of the approval processes for electricity projects and considering the issues raised by other municipalities, staff are recommending that all projects (with the exception of those currently exempted under the Planning Act) be subject to the zoning (Section 34) and site plan (Section 41) processes of the Planning Act. This will ensure that any local land use and environmental concerns are identified and addressed through the planning processes.

Establishing a Planning Framework for Energy and Other Major Projects

ROPA 25 (Section 176) sets out a number of policies dealing with the provision of utility services and calls for the Region to act as the coordinator of interests of the Local Municipalities in working with utility bodies to select appropriate sites. It also recommends that the Region coordinate with the Local Municipalities, agencies, utilities and developers the design, construction, operation and maintenance of all utility services to minimize community and environmental impact and to ensure the timely and cost-efficient services to the public.

Continued growth in the western portion of the GTA will require the construction of additional energy facilities to meet the growing demand for electricity and to avoid possible electricity supply issues. Given the potential size of future energy facilities, demand for services and their impact on surrounding land uses, staff are of the opinion that a more comprehensive policy framework should be examined to guide the location of such facilities.

Planning staff are proposing to examine a policy framework as part of the multi-year work program identified in staff report PPW15-06. Staff would begin this exercise by understanding the generation and distribution of energy requirements in context of the future growth needs of the Region. The timing and implementation of a policy framework would be dependent on developing an understanding of Halton’s future energy requirements and the future plans of the appropriate energy providers to construct the needed facilities.

Conclusion

For the most part staff support the changes to the Planning Act identified in Bill 51 as they implement some of the Ontario Municipal Board and planning reforms requested by municipalities and provided the tools that will assist in implementing Places to Grow. Section 23 of the Bill 51 has raised concerns among a number of the GTA Regions and municipalities that exempting undertakings related to energy would not allow local concerns to be addressed and result in possible land use conflicts. Staff will continue to monitor Bill 51 and report back on the proposed regulation respecting energy undertakings once it is released.

FINANCIAL/PROGRAM IMPLICATIONS

There are no financial implications associated with this report.
RELATIONSHIP TO THE STRATEGIC PLAN

This report has no direct relationship to the 2006 Planning and Public Works Committee Plan.

Respectfully submitted,

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Approved by

A. Brent Marshall
Chief Administrative Officer

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