



STAFF REPORT ACTION REQUIRED

Update - Official Plan Conformity to the Growth Plan

Date:	March 25, 2009
To:	Planning and Growth Management Committee
From:	Gary Wright, Chief Planner and Executive Director
Wards:	All
Reference Number:	Pg090010

SUMMARY

On June 16, 2006 the Provincial Growth Plan for the Greater Golden Horseshoe came into effect under the authority of the *Places to Grow Act, 2005* (the Act). Under the Act, municipalities within the Greater Golden Horseshoe are required to bring their respective Official Plans into conformity with the Growth Plan by June 2009. In order to bring the Official Plan into conformity, policy amendments to the Official Plan are required (Attachment 1).

At its meeting of February 4, 2009, Planning and Growth Management Committee directed staff to consult with interested parties and members of the public regarding the City's proposed actions to bring the Official Plan into conformity with the Growth Plan. This report provides a summary of the results of the consultation process and seeks Planning and Growth Management Committee's direction to give notice on the attached proposed Official Plan Amendment.

RECOMMENDATIONS

The City Planning Division recommends that:

1. Notice for the public meeting under the Planning Act be given in accordance with the regulations under the Planning Act.
2. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

At Planning and Growth Management Committee's meeting of February 4, 2009, City Planning staff submitted a report regarding the City's ongoing work to bring the Official Plan into conformity with the Growth Plan. The report outlined Planning staff's consultations with staff from the Ontario Growth Secretariat as well as proposed policy actions to address the Province's conformity requirements. Planning staff were directed to hold public consultations on the conformity exercise and report back to the Committee on the results of the consultations and the proposed Official Plan policy amendments.

An electronic version of this report can be found at the following web link:
<http://www.toronto.ca/legdocs/mmis/2009/pg/bgrd/backgroundfile-18337.pdf>.

ISSUE BACKGROUND

The Growth Plan for the Greater Golden Horseshoe came into effect on June 16, 2006. Although the Growth Plan is not intended to replace municipal official plans, the Province considers them key in implementing the Growth Plan's policies and intent. Municipalities in the Greater Golden Horseshoe are required to bring their respective official plans into conformity with the Growth Plan by June 2009.

The City of Toronto is currently on-track to meet the Province's conformity deadline. The City's Official Plan is well positioned from a general policy perspective to be in conformity with the Growth Plan. However, the Province advised the City by way of a letter dated July 28, 2008 that additional work in three policy areas of the Official Plan are required in order to obtain complete conformity. Those policy areas are:

1. Population and Employment forecasts: the Province has advised that the Growth Plan's population and employment forecasts as shown on Schedule 3 of the Growth Plan for the City of Toronto are to be recognized in the Official Plan;
2. Urban Growth Centres: the Province has advised that the Growth Plan's gross density target of 400 residents and jobs per hectare for the City's Urban Growth Centres is to be specified in the Official Plan as a minimum density target for *Centres* and the *Downtown*;
3. Employment Areas: the Province has advised that Policy 4 of Section 4.6 of the Official Plan does not conform to the Growth Plan.

Planning staff's proposed Official Plan policy amendments to address the Province's above conformity requirements are contained in Attachment 1 of this report.

The proposed amendments are based in part on comments heard and received by staff during a series of public consultations and meetings staff held with citizens, stakeholders and other interested parties during the first half of March 2009. In total four consultative sessions were held as follows:

March 4 th , 2009:	Session held at City Hall;
March 9 th , 2009:	Meeting held with members of BILD;
March 10 th , 2009:	Session held at North York Civic Centre;
March 11 th , 2009:	Session held with representatives of industrial associations, manufacturers, etc.

The sessions held March 4th & 10th were publicly advertised in the February 18th 2009 edition of the Toronto Star. In addition, invitation notices were sent out to all ratepayer and community associations registered with the City's Clerks Division. Invite notices were also sent out to all industrial associations on file with the City's Economic Development, Culture and Tourism Division for the meeting held on March 11. A total of 39 individuals and representatives attended the four sessions.

COMMENTS

The proposed attached policy amendments affect three policy areas of the Official Plan. A summary of each proposed policy amendment is provided below along with any relevant comments heard and/or received by staff during the consultative process.

Population and Employment Forecasts

City Planning staff are proposing to delete the Official Plan's current policy containing the population and employment targets (Policy 3 of Section 2.1) and replacing it with the proposed policies as follows:

1. "Toronto will accommodate 3.08 million residents by 2031. This Plan provides a land use policy framework that accommodates all the housing required to achieve this forecast."
2. "Toronto will accommodate from 1.64 million jobs to as many as 1.84 million jobs by 2031. This Plan provides a land use policy framework that protects all the lands that are required to meet this range of forecasts."
3. "To ensure a diverse economic base and provide fulfilling and well-paid employment opportunities for Toronto residents all lands designated as Employment Areas within the Employment Districts as shown on Map 2 of this Plan, are required to achieve the City's range of employment forecasts by 2031."

In addition to the above, staff are proposing to revise the side bar entitled "Toronto's Growth Prospects" as well as add new unshaded text regarding the Growth Plan and the Greater Golden Horseshoe (see Attachment 1).

Comments Received:

During the consultative sessions questions and comments were primarily confined to requests for clarification regarding Planning staff's position that the Official Plan did provide a policy structure that could accommodate the excess housing required to meet the Growth Plan's higher population target within the City's priority growth areas. One attendee at the March 9th meeting commented that this may not be the case given assumptions regarding average household size. City Planning staff remain confident that there is sufficient lands in the Official Plan's priority growth areas which include the *Centres, Avenues, Downtown* and other residentially designated lands within the *Mixed Use Areas* to accommodate the Growth Plan's higher target.

Concern was raised by one individual that the Growth Plan's lower employment target could encourage conversions of employment designated lands for residential or other non-employment uses. In response, Planning staff noted that the creation of the above employment range maintains the Official Plan's original employment target and further that recent research has shown that all employment designated lands within the Official Plan's *Employment Districts* are required to meet either target¹. This is the basis of the third policy proposed above.

Urban Growth Centres (UGCs)

The Province has advised the City, that the Growth Plan's gross density target of 400 residents and jobs per hectare should be incorporated into the Official Plan as an absolute minimum for Toronto's *Centres* and the *Downtown*. Staff propose inserting an additional sub-policy under Policy 2 of Section 2.2 of the Official Plan as follows:

- "2. Growth will be directed to the *Centres, Avenues, Employment Districts* and the *Downtown* as shown on Map 2 in order to:
 - a) achieve a minimum combined gross density of 400 residents and jobs per hectare in the *Centres* and the *Downtown*;"

As part of planning staff's efforts to demonstrate to the Province that the City's UGCs/*Centres* were already "planned" to achieve the Growth Plan's minimum density target, density projections based on maximum build-out scenarios of existing, in-force as of right permissions as contained in either a Secondary Plan or current in force zoning were developed. In each case, all four UGC/*Centres* studied (North York, Etobicoke, Yonge-Eglinton, Scarborough) generally exceeded the Growth Plan's minimum gross density target under a maximum build-out development scenario. The results of this exercise were presented as part of planning staff's consultative efforts as evidence that Toronto is already well on its way to meeting the Growth Plan's minimum density requirements.

¹ City of Toronto's Long-term Employment Land Strategy, Hemson Consulting Ltd., 2007

Regarding the UGC boundaries, three of the geographies as determined by the Province generally correspond to the boundaries of the Official Plan's *Centres* (North York, Scarborough, Etobicoke) as defined by the in force Secondary Plan for each *Centre*. The Province's UGC boundary for Yonge-Eglinton does not correspond with either the geography of the in force Secondary Plan, or the area shown as the Yonge-Eglinton *Centre* on Map 2 of the Official Plan. Policy 2.2.4.3 of the Growth Plan requires municipalities to delineate the boundaries of the UGCs in their official plans and the Yonge-Eglinton Centre was recently the study of a Focussed Review, which involved significant input for the local community. Planning staff will be undertaking a separate consultative process with the local community to explore available options and recommend a course of action to ensure the Official Plan conforms to the Growth Plan with respect to the Yonge-Eglinton UGC.

Comments Received:

During the consultative process questions for further clarification regarding the Planning staff's development projections were received and addressed but on the whole comments were limited. One attendee noted that the City would have to monitor how the future development of the Toronto's UGCs/*Centres* would impact the City's infrastructure. Staff noted that infrastructure capacities and requirements were identified through the development of the current Secondary Plans now in force in each of the *Centres* and monitoring occurs on an ongoing basis as development applications are received and processed.

Employment Areas

The Province has advised the City that Policy 4 of Official Plan Section 4.6 does not conform to the Growth Plan. Policy 4 reads as follows:

- “4. Consideration may also be given to permit large-scale and stand-alone retail stores in locations on major streets, as shown on Map 3, that do not form the boundary of *Employment Areas*, other than in the Central Waterfront, only by way of an Official Plan Amendment, if it can be demonstrated, among other matters, that:
- a) such development will not undermine the stability of the *Employment Area* and will have particular regard for the viability of industrial uses;
 - b) sufficient transportation capacity is available to accommodate the extra traffic generated by the development, resulting in an acceptable level of traffic on adjacent and nearby streets; and
 - c) the economic health of nearby shopping districts is not adversely affected.”

The Province specifically noted in its letter that the above policy does not give permissions for major retailing on lands that do not form the boundary of an *Employment Area*. The Province also noted that an Official Plan Amendment is required in order to grant those permissions for major retailing, which under policy 2.2.6.5 of the Growth

Plan is considered a “non-employment” use. As such, any development application filed under this policy would be considered an application to convert lands within an employment area for the purposes of permitting a non-employment use. Under Growth Plan policy 2.2.6.5 such conversions can only be permitted by municipalities through the completion of a Municipal Comprehensive Review (MCR) the contents and requirements of which are also set out in policy 2.2.6.5. The Province noted that Policy 4 as shown above does not reference the MCR requirement and as such does not conform to the Growth Plan.

Generally speaking, an MCR is a significant undertaking requiring among other studies and information the creation of a region wide set of population and employment forecasts and a land needs assessment. As such, City Planning view an MCR as being a significant component of an Official Plan review to be undertaken every five years. As such, Planning staff propose to delete Policy 4, which in addition to meeting the City’s Growth Plan conformity requirements would serve to reinforce Council’s intent to protect Toronto’s limited supply of employment designated lands within the *Employment Districts*.

Comments Received:

The majority of comments and questions staff received during the consultative process involved the proposal to delete Policy 4. On the whole comments were generally supportive, however the legal representative for Home Depot Holdings Limited expressed their client’s opposition to the proposed deletion by way of a letter dated February 18, 2009. A copy of this letter is provided as Attachment 2 to this report.

Supportive comments for the proposed deletion were heard at 3 of the 4 meetings held. Of note, at the March 11th meeting for industrial associations, support for the proposed deletion was provided in addition to a suggestion that Planning staff consider a full review of Section 4.6, Policy 3 along with a review of certain sensitive land uses currently permitted within *Employment Areas* under Policy 2.

In addition to the comments, staff were asked at all meetings about the City’s timing of the five year Official Plan review. The five year review is currently scheduled for 2011.

Conclusion

Based on the consultative meetings and comments received, City Planning staff recommend that the attached Official Plan policy amendments be brought forward as an Official Plan Amendment to a Statutory Public Meeting at the next Planning and Growth Management Committee meeting scheduled for May 6th, 2009. The proposed amendments are required to meet the City's Growth Plan conformity requirements as advised by the Province by the legislated deadline of June 2009.

CONTACT

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SIGNATURE

Gary Wright
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

Attachment 1: Proposed Amendments to the Official Plan
Attachment 2: Letter dated February 18, 2009 from Mr. Steven A. Zakem, Solicitor Aird
and Berlis LLP

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Attachment 1: Proposed Amendments to the Official Plan

2.1 Building a More Liveable Urban Region

Delete Existing Sidebar on Page 2-1 Entitled: “Toronto’s Growth Prospects” and Replace with the Following:

“Toronto’s Growth Prospects

The Greater Golden Horseshoe (GGH - shown on Figure 1) is one of the fastest growing regions in North America, and by 2031 is forecast to be home to 11.5 million people and 5.5 million jobs. Of these totals, 27% of the GGH’s forecasted total population and 30% of its forecasted total jobs will be accommodated within the City of Toronto. This Plan presents a policy framework that will prepare the City to realize and possibly exceed the population and employment forecasts. Successfully accommodating this growth will depend on the success of this Plan in creating dynamic transit-oriented mixed use Centres and Avenues as well as protecting and investing in the City’s existing supply of lands designated for employment uses.”

Insert the Following Unshaded Text Under the Last Bulleted Paragraph on Page 2-2

- “Toronto is also part of the Greater Golden Horseshoe and is subject to the Province’s Growth Plan for the Greater Golden Horseshoe. The Growth Plan provides growth management policy direction and its underlying legislation requires that Official Plans and all decisions by planning authorities conform to its policies and intent. Both the Growth Plan and this Plan emphasize that all population and employment growth will be accommodated by protecting lands designated for employment uses, focusing intensification within appropriate areas, building complete communities and creating transit-supportive neighbourhoods.”

Delete Existing Policy 3 on Page 2-3 and Replace with the Following:

3. “Toronto will accommodate 3.08 million residents by 2031. This Plan provides a land use policy framework that accommodates all the housing required to achieve this forecast.
4. Toronto will accommodate from 1.64 million jobs to as many as 1.84 million jobs by 2031. This Plan provides a land use policy framework that protects all the lands that are required to meet this range of forecasts.
5. To ensure a diverse economic base and provide fulfilling and well-paid employment opportunities for Toronto residents all lands designated as Employment Areas within the Employment Districts as shown on Map 2 of this Plan, are required to achieve the City’s range of employment forecasts by 2031.”

2.2 Structuring Growth in the City: Integrating Land Use and Transportation

Insert the following as sub-policy 2a of Section 2.2 and re-letter the subsequent policies of the section accordingly:

“2. Growth will be directed to the *Centres, Avenues, Employment Districts and the Downtown* as shown on Map 2 in order to:

- a) achieve a minimum combined gross density of 400 residents and jobs per hectare in the *Centres* and the *Downtown*;

4.6 Employment Areas

Delete policy 4 of this section.

**Attachment 2: Letter dated February 18, 2009 from Mr. Steven A. Zakem, Solicitor
Aird and Berlis LLP**

AIRD & BERLIS LLP

Barristers and Solicitors

Steven A. Zakem
Direct: 416.865.3440
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February 18, 2009

Our File: 96330

BY EMAIL: cgiles@toronto.ca

Christian Giles, Planner
City of Toronto, Policy and Research
23rd Floor, 55 John Street
Toronto, ON M5V 3C6

Dear Mr. Giles:

**Re: Community Consultation Meeting, March 10, 2009
PG23.5 - Official Plan Conformity to the Growth Plan
Home Depot Holdings Limited**

We are the solicitors for Home Depot Holdings Limited ("Home Depot"). Please be advised that our client's planning consultant will be in attendance at the March 10, 2009 Community Consultation Meeting.

For your information, I am attaching a copy of our letter to Ms. Ulli Watkiss, dated February 3, 2009. This letter details Home Depot's position with respect to any proposed amendment to Policy 4.6.4 of the City of Toronto's Official Plan. Please ensure this letter and its attachment forms part of any public record arising from the March 10 consultation session.

If you have any questions or concerns, please feel free to contact the undersigned at your convenience.

Yours very truly,

AIRD & BERLIS LLP


Steven A. Zakem
PJH/

Encl.

cc: Home Depot
B. Clarkson, MHBC
P. Harrington, Associate, Aird & Berlis LLP

AIRD & BERLIS LLP

Barristers and Solicitors

Steven A. Zakem
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February 3, 2008

Our File: 96330

BY FAX & COURIER

Ms. Ulli Watkiss
City Clerk, City of Toronto
13th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Dear Ms. Watkiss:

**Re: Request for Notice and Submission
PG23.5 - Official Plan Conformity to the Growth Plan
Home Depot Holdings Limited**

As you are aware, our firm acts for Home Depot Holdings Limited ("Home Depot"). Our client is in receipt of a staff report to the City's Planning and Growth Management Committee, dated January 14, 2009, pertaining to the City's upcoming Growth Plan conformity exercise.

Please accept this letter as our client's request for notice of any and all public meetings, open houses and committee/council decisions pertaining to the City's Growth Plan conformity exercise.

While Home Depot is interested in any and all amendments proposed by the City to bring its Official Plan into conformity with the Provincial Growth Plan, our client is particularly interested in any proposed amendments affecting policy 4.6.4 of the City's Official Plan. Policy 4.6.4 resulted from a 2006 settlement reached between the City and Home Depot to address an outstanding appeal of the City's new Official Plan. This settlement was approved by the Ontario Municipal Board as constituting good planning in the greater public interest. For the reasons that follow, Home Depot asks that City staff be instructed not to bring forward any official plan amendment that would substantively modify or delete policy 4.6.4 from the City's OP.

As you are likely aware, prior to Council's initial adoption of the City's new Official Plan, Home Depot wrote to the City's Planning Division to register a concern respecting the draft policies proposed for the City's new "Employment Area" designation. Home Depot's concern was articulated as follows:

The majority of the Home Depot stores in Toronto will be subject to the new "Employment Area" designation. The policies for this designation provide that large scale, stand-alone retail stores and power centres are permitted only on major streets that form the boundary of the "Employment Area" designation. It would appear that the intent of the policy was to

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direct new large scale retail facilities to major streets and away from the internal locations within the Employment Areas. However, in some locations, portions of the "Employment Area" designation straddle a major street...

An unintended effect of the proposed policy might be to prohibit new large scale stores from locating on sites on major streets. We believe that a modification should be made to the policy to ensure that the intent of the Plan is not undermined.

When Council proceeded to adopt the draft Employment Area policies without further amendment, Home Depot filed a Notice of Appeal with the Ministry of Municipal Affairs and Housing. In its appeal, Home Depot reiterated its concern with the City's new Employment Area policy, stating: "[Policy 4.6.3 does] not recognize that there are many major streets within the Employment Area that do not form the boundary of such areas and which are appropriate for large-scale stores." Home Depot's appeal was assigned OMB File No. O030226 and was known as "Appeal 89E".

Subsequent to Home Depot's appeal (filed in April 2003), representatives of Home Depot and City staff exchanged various letters and memoranda in an attempt to arrive at policy language that would address Home Depot's concern. During these negotiations, the Province released both the Draft Growth Plan (February 2005) and the Proposed Growth Plan (November 2005), both of which were available to staff as negotiations with Home Depot progressed.

In the Spring of 2006, staff and Home Depot settled on a new Employment Area policy which, if approved, would address Home Depot's appeal. This new policy was approved by the Ontario Municipal Board on June 5, 2006 (with written reasons provided on July 6, 2006) and became what is now policy 4.6.4. The Board approved policy 4.6.4 in large part due to a supporting affidavit sworn by Mr. Victor Gottwald, a Senior Planner with the City, who attested to the following with respect to policy 4.6.4:

10. It is my professional opinion that the modifications to the Official Plan presented in settlement of the Home Depot appeal represent good planning and should therefore be approved by the Ontario Municipal Board.

Policy 4.6.4 has been in force and effect since June 5, 2006, and has been employed by the City on more than one occasion to support large scale, stand alone retail proposals in Employment Areas. Prime examples include 1561 & 1563 The Queensway and 555 Rexdale Boulevard (at Woodbine Raceway).

More recently, policy 4.6.4 was the central consideration by the Board on an appeal by Home Depot in respect of an application to approve a large scale, stand alone retail redevelopment proposal at 840-842 York Mills Road. While the Board refrained from opining directly on policy 4.6.4's conformity with the approved Growth Plan, the Board did find that the use of policy 4.6.4 to approve new retail development does not constitute a "conversion" and therefore does not attract the application of the Growth Plan's employment land conversion policies. It is therefore in error for staff to assert that policy 4.6.4 does not "conform to" the conversion policies of the Growth Plan – the Growth

Plan's conversion policies simply do not apply to applications that seek to implement the permission provided by policy 4.6.4.

Much the same as Policy 4.6.3 (which staff is apparently proposing to keep), there is nothing offensive to the Growth Plan about policy 4.6.4. Through its settlement with Home Depot, the City approved the principle of major retail uses within its Employment Areas subject to specific locational criteria. In the case of applications that are not on the boundary of an existing Employment Area, the implementation of such permission is subject to stringent study requirements and the ability of the City to impose site-specific controls at the OP level. This type of flexibility for addressing growth pressures moving forward is key to realizing the Growth Plan's goals and objectives. As stated in the Growth Plan itself, "[t]his Plan does not replace municipal official plans, but works within the existing planning framework to provide growth management policy direction for the GGH" (s. 1.1).

In fact, the Province has specifically recognized that where a municipality has turned its mind to where and how it will permit major retail uses in its own employment areas, such efforts are not undone by the Growth Plan. The following passage appears in a May 2008 background paper published by the Ontario Growth Secretariat, entitled *Planning for Employment in the Greater Golden Horseshoe*:

Recent provincial policy changes require greater justification and coordinated planning for the conversion of lands in employment areas to non-employment uses. For example, the *Planning Act* provided the authority to municipalities to protect employment areas and both the Provincial Policy Statement, 2005 and the Growth Plan require a comprehensive review to be undertaken to justify a conversion to non-employment uses. Moreover, the Growth Plan addresses a concern raised by many stakeholders about the conversion of lands in employment areas to major retail uses. The Growth Plan clarifies that where major retail is not already permitted in an employment area, it is considered a conversion of use and must meet certain policy tests before a conversion can occur.

However, these policy tools do not replace the need for municipalities to proactively plan for different types of employment activities and the needs of emerging sectors... The need for clarity in permitted uses needs to be balanced with the need to maintain flexibility to respond to changes in the employment market as outlined in earlier sections. [emphasis added]

This approach makes sense from a policy perspective. The City should have the ability to approve retail proposals in Employment Areas subject to specific planning criteria. This allows the City to address site-specific situations and future changes in the employment market. The intent and purpose of the Growth Plan, being growth management within the GGH, is in no way offended by this flexibility.

Further, to argue that policy 4.6.4 does not ensure the protection of the City's employment lands ignores the onerous justification criteria imposed by the City in evaluating each retail application. It does not, in all cases, take a "municipal comprehensive review" to figure out whether there is merit to a particular site-specific retail proposal. So long as the planned function for the specific Employment Area is not undermined, the City should be

empowered to consider major retail proposals in accordance with the adopted policies of its Official Plan.

In summary, we urge the members of the Planning and Growth Management Committee to review the Board's decision on Home Depot's appeal prior to forming any conclusions with respect to staff's proposal to delete policy 4.6.4. A copy of the decision is attached for the Committee's convenience.

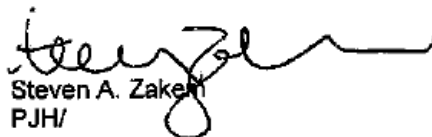
We further encourage the Committee to review staff's justification for retaining policy 4.6.3 as being the product of a prior municipal comprehensive review. At page 11 of the attached decision, the Board specifically found that if policy 4.6.3 is deemed to conform to the Growth Plan, then policy 4.6.4 should enjoy the same status, being a product of that same "comprehensive review". As outlined above, and discussed in the attached Board decision, there is no supportable basis for making a distinction as between policies 4.6.3 and 4.6.4 as part of the City's Growth Plan conformity exercise.

Finally, we ask that the Committee consider the need for the City to maintain a flexible response to future retail applications in its Employment Areas. Given the state of the economy, now is not the time for Canada's largest urban centre to adopt overly restrictive approaches to future land use planning.

The undersigned is available to address any questions the Committee or staff may have with respect to this matter.

Yours very truly,

AIRD & BERLIS LLP



Steven A. Zakem
PJH/

cc (by fax only):

Merle MacDonald, Secretariat Contact, Planning and Growth Management
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