TORONTO CITY CLERK

Consolidated Clause in Planning and Transportation Committee Report 2, which was considered by City Council on May 23, 24 and 25, 2006.

1a

Bill 51, Planning and Conservation Land Statute Law Amendment Act, 2005 and the Land Use Provisions of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005

City Council on May 23, 24 and 25, 2006, amended this Clause:

(1) in accordance with the following staff recommendations contained in the Recommendations Section of the report (April 13, 2006) from the Chief Planner and Executive Director, City Planning [as contained in the Clause]:

"It is recommended that:

(1) the Minister of Municipal Affairs and Housing be advised that Bill 51 should be amended to include the changes noted in the revised Appendix 2 attached to this Report; and

(2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto."; and

(2) by adding the following:

"That:

(a) the Minister of Municipal Affairs be again requested to bring forward:

(i) reform to the Ontario Municipal Board (OMB), including that the OMB be a true appeal body and not a substitute decision maker; and

(ii) grounds for appeal be limited to Council acting unreasonably or in a manner not consistent with the provincial policy statement or not in conformity with Provincial Plans;

(b) the following staff recommendations, contained in the Recommendations Section of the supplementary report (April 18, 2006) from the Chief Planner and Executive Director, City Planning [as contained in the Clause], be adopted:

'It is recommended that:

(1) the Minister of Municipal Affairs and Housing be advised that Council recommends that the Bill 51 requirement to establish complete application policies in official plans not apply to the City of Toronto and that any legislation and related regulations addressing the matter of complete applications for Toronto instead be set out in Bill 53;

(2) the provisions in Bill 53:

(a) allow the City to establish complete application requirements through by-laws of Council, with proper Notice but with no appeal to the OMB; and

(b) allow that such by-laws follow Notice requirements that are either set out by local by-laws or alternatively prescribed by provincial regulation, in order to ensure proper notification to the public of complete application requirements and revision thereto;

(3) the Minister of Municipal Affairs and Housing be requested to consult with City staff in his preparation of the Bill 53 regulations relating to complete applications;

(4) the request for complete application requirements to be enshrined in Bill 53 be referred to the City Manager and City Solicitor for consideration in their preparation of a submission to the Standing Committee of the Legislature considering Bill 53; and

(5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.'; and

(c) the following staff recommendations contained in the Recommendations Section of the supplementary report (April 24, 2006) from the Chief Planner and Executive Director, City Planning Division [as contained in the Clause], be adopted:

'It is recommended that:

(1) the Minister of Municipal Affairs and Housing be advised that Council recommends that the Minister not seek to exempt any further energy undertakings from the provisions of the Planning Act as is currently proposed under Section 23 of Bill 51, given that the environmental assessment (EA) process is poorly suited to identifying and addressing site-specific and local land-use impacts of development, including energy projects, facilities or undertakings;

(2) the Minister of the Environment be advised that Council recommends that the Environmental Assessment Act include the requirement that energy undertakings be subject to an evaluation under the City's site-plan control and zoning processes and that this evaluation should occur in tandem with the environmental assessment;

(3) the Chief Planner and Executive Director, City Planning Division be directed to develop urban design guidelines for both large and small scale energy undertakings;

(4) the Chief Planner and Executive Director, City Planning Division be directed to ensure that the City's Zoning By-laws contain provisions to regulate energy projects, including sustainable and green energy projects; and

(5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.' "

This Clause, as amended, was adopted by City Council.

City Council on April 25, 26 and 27, 2006, postponed consideration of this Clause to its next regular meeting on May 23, 2006.

Council also considered additional material, which is noted at the end of this Clause.

The Planning and Transportation Committee recommends that City Council:

(1) adopt the staff recommendations in the Recommendations Section of the report (February 13, 2006) from the Chief Planner and Executive Director, City Planning, subject to adding a new Recommendation (4) with the balance of the Recommendations being renumbered accordingly:

"(4) the Ontario Municipal Board shall be guided by the City of Toronto's Official Plan;"; and

(2) adopt the staff recommendations in the Recommendation Section of the report (February 20, 2006) from the Chief Planner and Executive Director, City Planning.

Action taken by the Committee:

The Planning and Transportation Committee requested the Chief Planner and Executive Director, City Planning, to report to City Council, for its meeting of April 25, 2006, on:

(a) a revised Appendix 1 which would include the previously adopted positions of Council;

(b) ways to deal with appropriate municipal approvals on energy facilities, including renewable resources; and

(c) the anticipated costs (gross and net) of implementing Section 115 "New Power – Appeal Body for Local Land Use Planning Matters"(Appendix 1).

The Planning and Transportation Committee submits the report (February 13, 2006) from the Chief Planner and Executive Director, City Planning:

Purpose:

To advise Council of the contents and implications of Bills 51 and 53 as they pertain to land use planning matters.

Financial Implications and Impact Statement:

There are no direct financial implications arising from the recommendations in this report. From the land use planning perspective, Bills 51 and 53, if enacted, will provide a number of legislative and regulatory tools not currently available to Council. The impact of these tools will depend upon how Council decides to incorporate them into the City's planning and development process. Bills 51 and 53 are not likely to come into effect until late in 2006 at the earliest. Therefore, the Acts will not be a factor for the City's 2006 budget process. The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

(1) the Minister of Municipal Affairs and Housing be requested to consult with City staff in his preparation of the regulations accompanying Bills 51 and 53;

(2) the suggestions made in this report regarding Bill 53, as outlined in Appendix 1, be referred to the City Manager and City Solicitor for consideration in their ongoing analysis of Bill 53 and the preparation of a submission to the Standing Committee of the Legislature that will be considering this Bill;

(3) the Minister of Municipal Affairs and Housing be advised that Bill 51 should be amended to include the changes noted in Appendix 2; and

(4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Context:

On January 31, February 1 and 2, 2006, Council adopted the City Manager's report dated January 12, 2006, entitled "Bill 53 – *Stronger City of Toronto for a Stronger Ontario Act, 2005*" which informed Council of the contents of Bill 53 and of some of the primary differences

between this Bill and Toronto's existing legislative framework. It also made recommendations that Council seek changes to Bill 53, consistent with established Council positions, when the Bill is considered by a Standing Committee of the Ontario Legislature.

The City Manager's report included a section dealing with land use planning, listing key legislative amendments affecting planning and highlighting the interface between Bills 51 and 53. The purpose of this report is to provide a more detailed commentary regarding the contents and implications of Bills 51 and 53, specifically as they pertain to land use planning matters. The report includes two appendices: Appendix 1 suggests changes to Bill 53, while Appendix 2 recommends changes affecting Bill 51. The report has been prepared in consultation with the City Manager and City Solicitor, who concur with its recommendations.

Next Steps for Bills 51 and 53:

The City Manager and City Solicitor are continuing their review of Bill 53 which includes further analysis of the Bill, collecting comments from City staff (including City Planning Division staff), and discussions with provincial staff. The Chief Planner is leading a concomitant exercise around Bill 51.

Background:

On December 12, 2005 the provincial government introduced Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2005* as part of its ongoing efforts to reform land use planning in Ontario and redefine the relationship between Ontario municipalities and the provincial government. On December 14, 2005 first reading was given to Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* which also contains land use planning authorities for the City of Toronto.

Bill 51 makes numerous amendments to the *Planning Act.* These changes modify aspects of the land use planning process, provide additional tools for implementation of provincial policies and give further support to sustainable development, intensification and brownfield redevelopment. Some technical and housekeeping amendments have also been included.

Bill 51 builds on recently approved provincial initiatives which include:

- Enhanced municipal powers to facilitate the rehabilitation of brownfield properties through the *Brownfields Statute Law Amendment Act, 2001*
- Strengthened Provincial Policy Statement (PPS) that requires all planning decisions to be "consistent with" the PPS
- Improved timeframes for municipalities to review planning applications through *The Strong Communities (Planning Amendment) Act, 2004*
- Authorization to create provincial growth management plans, such as the "Greater Golden Horseshoe Growth Plan", through *The Places to Grow Act, 2004*
- Moritorium on new urban uses outside existing municipally designated urban boundaries through the *Greenbelt Protection Act, 2004*

Considered in tandem, Bills 51 and 53 provide the City of Toronto with a comprehensive package of land use planning reforms. The Bills differ, however, in terms of scale, scope and intention. Bill 51 is broad in scope and has province-wide application. Its intention is to redefine the role and scope of the Ontario Municipal Board as it relates to the land use planning process and to shift greater responsibility for land use planning decisions from the Ontario Municipal Board to municipal councils. This shift in responsibility and powers also recognizes that municipalities require new tools to address challenges associated with growth management, intensification and redevelopment.

Bill 53, on the other hand, is specifically focused on reforming the City of Toronto's legislative framework and its relationship with the provincial government. The Bill is intended to empower the City of Toronto with the tools needed to address its unique needs and circumstances that are related to its specific status as a diverse, built out and mature urban environment.

Comments:

Bill 51, *Planning and Conservation Land Statute Law Amendment Act, 2005,* follows Bill 26, *The Strong Communities (Planning Amendment) Act, 2004*, as part of the Province's ongoing comprehensive reform to the land use planning process in Ontario.

The intention of Bill 51 is to:

- Redefine the role and scope of the Ontario Municipal Board (OMB)
- Ensure that municipalities have the tools, powers and responsibilities needed to address the challenges associated with managing growth and development
- Provide municipalities with powers and tools to aid in the development approval process
- Provide an environment for a well informed and documented municipal decision-making process and outcome
- Highlight provincial interests in reference to sustainable development and compact growth
- Enhance requirements for public notice, information and public consultation and engagement

The Relationship Between Bill 51 and Bill 53

Bill 53 gives the City enhanced planning powers beyond those in Bill 51. The two Bills must be read together to fully understand the planning powers provided to the City. Wherever Bill 51 exempts Toronto from specific sections of the *Planning Act*, Bill 53 re-introduces these sections under the umbrella of *City of Toronto Acts*, in some instances with the same powers and in others with enhanced or modified powers. There are also new powers in Bill 53 that are not provided to other municipalities through Bill 51.

Both Bills serve to empower the City with more decision making authority regarding land use planning. Although some of the powers granted to the City in Bill 53 are also granted to other Ontario municipalities through Bill 51, the fact that Toronto has been granted its own version of these powers suggests that the Province intends to tailor the regulations implementing these legislative powers to specifically fit Toronto's needs.

It should also be noted that many new powers are linked to future provincial regulations and/or require that the City enact Official Plan amendments describing how the new powers are to be used. Each such OPA can, of course, be appealed to the Ontario Municipal Board. Consequently the full extent of the City's new powers is not yet understood and will only come into sharper focus once the Province releases draft regulations and subsequently once Council puts its mind to the necessary implementing OPAs.

The sections that follow describe the changes to the planning framework embodied in both Bill 51 and 53. The discussion of each new or enhanced authority identifies where the City's power differs from the more general authority in Bill 51, and identifies any areas where further review is required, where changes to the legislation should be sought or where specific regulations should be requested.

Shifting Role and Scope of the OMB

In the formal consultation process leading up to OMB reform, Council had recommended that:

- there be no de novo hearings
- the OMB become a true appeal body and not a substitute decision maker
- there be a leave to appeal process
- grounds for appeal be limited to Council acting "unreasonably" or in a manner not consistent with the PPS or not in conformity with Provincial Plans
- there be a local appeal body option for the City around Committee of Adjustment decisions.

The reforms contained in Bill 51 establish a higher standard for decision-making at the municipal level and impose significant limitations on the scope of the OMB's decision-making process. The reforms, however, are not as fundamental as Council had advocated in its earlier submissions to the Province.

Bill 51 requires that the Board "shall have regard to" Council decisions and any supporting information and materials that Council may have considered in making its decision. Municipal councils will be empowered to require that development applicants provide all and any information Council believes is necessary to make an informed decision at the front end of the approvals process (subject to having in place official plan policies).

Although Council decisions can still be appealed to the Board, a number of changes contained within Bill 51 will circumscribe the scope of those appeals and establish limits on the Board's role.

Key changes to the role of the OMB include:

- Setting restrictions on who may appeal a Council decision by limiting appeals to those parties who had previously made oral and/or written submissions before the Council decision was made.

- Setting restrictions on adding parties to OMB hearings with the exception of parties who had previously presented oral and/or written submissions before the Council decision was made or where the Board finds "reasonable grounds" to add the person as a party.

- Removing the right of appeal of a Council decision to refuse an application to convert employment lands a non-employment use.

- Setting restrictions on evidence presented at a hearing, by generally limiting evidence to what had been provided to Council before Council's decision was made, unless the OMB is of the opinion it was not reasonably possible to provide pertinent new information at that time.

- In permitting new information, the Board will be obliged to notify Council that it is being given an opportunity to reconsider its decision by making its written recommendation to the Board within a time period to be prescribed in regulation.

- The OMB will have a fourth grounds for dismissing an appeal or part of an appeal in addition to the existing: namely, lack of planning grounds, not made in good faith, or made for the purposes of delay. The Board will now be capable of dismissing an appeal or part of an appeal on the grounds of an "abuse of process".

- The OMB will now not be able to undo what has already been approved (such as "in-effect" official plan policies) nor approve anything that has not been dealt with in the decision of Council to which the notice of appeal relates.

- The municipalities are provided with the opportunity to set up a Local Appeal Board for disputed Committee of Adjustment decisions (the City's power for this resides in Bill 53).

As a package, these reforms represent a substantial change in the planning approval and appeal process, but fall short of Council's recommendations to make the OMB a true appeal body. No alternative appeal process is established for Toronto through Bill 53. This is a matter which should be revisited when Bill 53 is reviewed in two years' time.

Local Appeal Bodies

Bill 51 provides for municipalities to establish Local Appeal Bodies. The Local Appeal Body power for Toronto, however, is located in Bill 53 rather than Bill 51. Currently, the provisions under both Acts are identical.

Section 115 of Bill 53 enables the City to constitute by by-law, one local appeal body for certain local land use planning matters, such as minor variance applications and consents. The provisions of this section are the same as those for the rest of the Province as set out in Bill 51, in that the local appeal body is authorized to hear appeals under specified provisions of the *Planning Act*. For those purposes, the appeal body has the powers and duties of the Ontario Municipal Board under that Act.

Section 115 states that the City cannot appoint anyone to the appeal board who is a city employee, a member of City Council, a member of the Committee of Adjustment or Land Division Committee or a member of a "prescribed" class. As specified in Section 123 of Bill 53, the Minister of Municipal Affairs and Housing has the right to make regulations regarding the local appeal body by prescribing eligibility criteria and qualifications, restrictions, powers to hear appeals, exceptions, and disputes.

The legislation (both Bills 51 and 53) further stipulates that if there is a related appeal dealing with an official plan amendment, zoning by-law, conditions of subdivision approval and/or site plan approval, then the entire appeal gets bumped up to the OMB.

As part of the planning and OMB reform consultation process, Council previously advocated for Toronto's right to establish a local appeal board. Because the province has chosen to locate Toronto's Local Appeal Body powers outside the *Planning Act*, however, it may be possible to seek additional changes to these powers applicable only to Toronto. Consideration should be given to requesting the Province to broaden the City's mandate in Bill 53 to include the local appeal of other development applications whose impact is also purely "local" in nature, i.e. appeals of conditions of site plan approval and subdivision agreements.

Pre-consultation and Complete Applications

Bill 51 will permit Council to require that an applicant provide, at the time a development application is made, any and all information Council determines is needed to make an informed decision. The Act stipulates that provisions outlining what is meant by a "complete application" are to be set out in the Official Plan for all levels of the application process, be they official plan amendments, zoning by-laws, plans of subdivision, consents, or site plans. The Province intends to revise the minimum standards for a complete application in its existing regulations dealing with these requirements. Any additional municipal requirements beyond this new minimum will need to be spelled out in the form of official plan policies, which can be appealed to the OMB.

During the Bill 51 consultation period, the City of Toronto staff maintained that the requirement to establish complete application information policies in its Official Plan was onerous and not desirable given the complex nature of applications in the City. The difficulty in crafting official plan policies around complete application requirements could result in ongoing official plan amendments to accommodate the variety of circumstances surrounding various types of applications. It was felt that it should be sufficient for the City to pass a by-law following appropriate public consultation, setting out its requirements for various applications, for example, by approving the City's "Building Toronto Together" Development Guide. This is especially true given the new right set out in Bill 51 of an applicant to appeal to the OMB for direction respecting any particular requirement. The City should reiterate that the requirement of the Bill to enshrine policies of this nature in official plans <u>not</u> apply to Toronto.

Under Bill 51, once OP policies are in effect, Council will be able to refuse to accept or further consider applications until all information or materials that it considers necessary, have been received. Until Council is satisfied that complete information and fees have been received, the legislated timeframes for processing the application will not commence.

In addition to empowering Council to determine what information it requires applicants to submit, Bill 51 strongly promotes pre-consultation. Section 10(3) of Bill 51 states that Councils "shall permit" applicants to consult with the municipality prior to submitting their applications. The Act also empowers municipalities to enact by-laws to require pre-consultation. The "front-end" loading of the planning process enhances a municipality's control over the decision-making process and reduces the ability of applicants to race to the OMB before Council has been able to fully consider an application.

As noted previously, in the case of a dispute regarding an application's requirements, the applicant or council will be able to make a "motion for directions" to have the OMB determine if the information and material required by Council has been provided.

Clarifying Provincial Interests

The list of matters of provincial interest in Section 2 of the *Planning Act* has been expanded to include promotion of development designed to be sustainable, to support public transit and to be oriented to pedestrians.

Furthermore, modifications to Section 3 of the *Planning Act* require councils, the OMB and other government agencies, to make decisions that are consistent with and confirm with provincial policy statements and provincial plans that are in effect, *on the date the decision is made.* This differs from the current framework wherein municipal and agency decisions must be consistent with the policy statements and plans in effect at the time *an application is made.* With this additional requirement for decisions to be consistent with current provincial policies and interests, all planning reports will have to clearly demonstrate how a development application is or is not consistent with current provincial policies and interests.

Relationship with other Provincial Planning Initiatives

With the anticipated approval later this year of Greater Golden Horseshoe (GGH) Growth Plan (currently in draft form) under the *Places to Grow Act,* Toronto and other municipalities in the GGH will be expected to bring its Official Plan into conformity with the Growth Plan within three years. Under the *Places to Grow Act,* the Minister can unilaterally amend a municipal official plan to bring it into conformity with a Provincial Growth Plan, if a municipality has failed to do so within the legislated time frame (three years), and this Ministerial amendment cannot be appealed to the OMB. However, Bill 51 does not currently provide that appeals to the OMB of OPAs required to bring plans into conformity with the GGH Plan, be disallowed.

Council has previously requested that the *Planning Act* be amended to disallow appeals to the OMB of OPAs specifically enacted to bring local plans into conformity with Provincial Growth Plans. Otherwise, should amendments to the City's OP be required in order to meet the conformity test, the City will be responsible for the costs involved in defending Provincial policy which otherwise cannot be appealed if the Minister made the amendment. Therefore, Council should reiterate the request for this change to the *Planning Act,* as part of this report.

Official Plan & Zoning By-law Reviews

Currently, the *Planning Act* requires a municipality to hold a public meeting at least once every five years for the purpose of determining if a review of its official plan is needed. The onus to review official plans is strengthened in Bill 51. Section 12 of Bill 51 requires the City to revise its "in effect" (or in-force) Official Plan every five years to ensure it conforms with provincial plans, policies, and interests and, if the plan contains policies dealing with areas of employment, to ensure those policies are either confirmed or amended.

A complementary provision requires that municipalities amend their zoning by-laws to ensure that they are in conformity with the in-force Official Plan no later than three years after the official plan is revised. Formally encouraging the implementation of official plan policies with the timely updates of zoning by-laws is an important step towards bridging the gap between planning policy and practice. However, it must be recognized that the timeframe of three years will present particular challenges for cities of the scale and complexity of Toronto.

Bill 51 continues to provide legislative direction regarding the general contents of official plans as per the *Planning Act*, but adds to this a new option of prescribing through regulation, other matters to be included. This change will make it easier for the Province to establish more strategic parameters for the contents of official plans that reflect changing municipal and provincial policy-making and implementation priorities, without having to go through the legislative amendment process each time an OP contents change is requested or required.

Enhancing Community Consultation

Bill 51 amends the *Planning Act* to increase requirements for community consultation throughout the application process. In addition to the previous requirement for a public meeting (the "statutory" hearing), Bill 51 adds the requirement of an "open house" to be held at least seven days before the statutory public meeting. In the City of Toronto context, this would mean that there would be a minimum of three opportunities for public input into planning applications, the normal, non-statutory community consultation meeting, the statutory "open house" and the statutory public hearing at Community Council or Committee.

There is also a new requirement that in refusing an OPA, Council will, not later than 15 days after the day of refusal, ensure that written notice of the refusal is given. There was no previous requirement to provide such notice.

These new requirements will have resource implications that are not accounted for in the City Planning Division's base budget, and will need to be assessed prior to the 2007 Operating Budget.

Protection of Employment Lands

Bill 51 will amend the *Planning Act* such that municipalities will now be able to refuse official plan and zoning by-law amendment proposals to convert employment lands (now defined in the Act) to other uses, with no right of appeal to the OMB. An appeal to the City's employment areas will, however, be possible at the time of a comprehensive Official Plan review (now to be required every five years), which will either confirm or amend policies dealing with areas of employment.

The province's definition of "area of employment" is generally consistent with the employment lands land use designation in the new Official Plan. This amendment, previously requested by Council during the planning and OMB reform consultation process, greatly reinforces the City's ability to protect its employment land base to accommodate future jobs and property assessment growth.

Regulating Minimum and Maximum Densities and Heights

Bill 51 clarifies that municipalities can establish minimum as well as maximum heights and densities and also minimum lot area, in the zoning by-law, to help achieve provincial objectives related to intensification, compact growth and more efficient use of land and services. Toronto has been given this ability by way of Bill 53. This authority, previously requested by Council, will help to implement the Official Plan's city-building goals in the designated growth areas, including Centres and Avenues.

Conditional Zoning

Bill 51 allows for zoning with conditions ("conditional zoning") provided a municipality has official plan policies in place respecting the use of this tool, and provided the conditions are for matters to be set out in regulation. Bill 53, Section 113 (2), introduces this same provision for the City of Toronto. With Official Plan policies in place, subject to conditions prescribed by regulation, the City could enact by-laws requiring an owner of land to which the by-law applied, to meet certain conditions as part of a development. The legislation also provides for agreements which can be registered on title to secure the condition.

Based on background material provided by the Province for Bill 51, it appears that the Province generally views conditional zoning as a way of dealing with the physical, rather then the social challenges of intensification and "strong" community building. The Province uses the example of municipalities promoting environmental sustainability by setting conditions for energy efficiency and brownfield cleanup. Since the City's authority for conditional zoning resides in Bill 53, it is not clear whether the Province has the same view of this authority for Toronto. Previously the City requested a number of powers that could fall under conditional zoning, including inclusionary zoning for affordable housing, green development standards/guidelines and contributions for public art, among other matters.

Conditional zoning, depending on the nature of the regulation that will pertain to Toronto, could either be empowering for the City or disappointing. Based on the broad approach to municipal authority of Bill 53, it is expected that the Province will likewise take a permissive approach to its regulations related to this and other planning powers, by listing what conditions are prohibited rather than what is to be permitted. Having established this new authority through Bill 53 rather than Bill 51, it is anticipated that the Province intends Toronto's regulation to be tailored to the city's needs.

To be truly effective, any regulation should not preclude Toronto from having conditions that deal with the following range of matters:

- environmental sustainability;
- energy efficiency;
- green technologies (such as green roofs);

- waste management;
- transportation related improvements;
- travel demand management;
- conservation of natural heritage;
- heritage preservation;
- public art;
- housing matters, (including the mix of housing types, affordable housing, securing existing rental, rental replacement); and
- community services and facilities.

Staff will continue to pursue this broad approach with the Province as it develops the regulation for this section of Bill 53.

Site Plan Control

The City's Site Plan Control powers will no longer be found in the *Planning Act*, but will reside in Bill 53. Through Section 114 of Bill 53, the City will now be able to consider the exterior design of buildings (other municipalities do get this same power through Bill 51), including character, scale, appearance and design features of buildings and their sustainable design as part of site plan control. The previous explicit prohibition on controlling matters such as colour, texture, type of materials, window detail, construction details and architectural design has been excised from the *Planning Act* and likewise is not included in Section 114 of Bill 53. The exterior architectural details and materials of a building, which influence its character and physical appearance, can now be taken into consideration as part of site plan review process. Under both Bill 51 and 51, these enhanced powers can only be implemented if there are official plan policies in effect relating to them. It is not yet clear what the nature, scope or detail of the enabling policies need to be, however an OPA will be required to give effect to this authority.

Both Acts specifically note that interior design and the layout of interior areas, are not subject to site plan, and this remains a concern. Site planning in an urban context is not only about the review of individual buildings within a development site, but it is also about the relationship of the design and massing among all buildings, structures and spaces on and around a given site. The general layout and organization of interior spaces at grade directly affect the exterior design of a building and its successful interface with other buildings and spaces on the site and with the public realm. Section 114 of Bill 53 should be revised to clearly provide the City with approval authority over these matters.

A significant omission is also noted in the transfer by the Province of the City's Site Plan Control authority from the *Planning Act* to the new City of Toronto Act. Currently, municipalities cannot exercise site plan control over residential buildings containing less that 25 units unless there are official plan policies in place to provide for such review. This remains the case under Bill 51 for the rest of the Province. Toronto currently has such policies in its Plan. Bill 53, however, does <u>not</u> contain this enabling authority, with the clearly unintended consequence that under Bill 53 the City could not in future review residential developments with less than 25 units, despite having OP policies in place to this effect. This oversight will be brought to the attention of Provincial staff.

The City of Toronto received an additional power under site plan control not provided for elsewhere in the Province, to include adjacent, off-site public boulevard enhancements or improvements, such as landscaping, paving, street-furniture, curb ramps, waste and recycling containers and bicycle parking facilities in a site plan agreement. This power will greatly enhance the City's ability to implement streetscape improvements within the City's boulevard as development occurs, however, an official plan amendment will be required in order to put required policies in the Plan to access this authority.

Design Review Panels

Design review panels have not been specifically mentioned in either piece of legislation, although the matter was discussed extensively during the consultation period leading up to the introduction of Bill 51 and 53.

In discussions between provincial and City staff, it has been confirmed that it is intended that the City can establish design review panels. The Joint Report of May 2005 spoke specifically of design review panels as an example of a new policy option for the City under the new City of Toronto Act. The final Joint Report to Review the City of Toronto Act of November 2005 stated examples of specific enhancements to the City's general authority including the ability to establish a design review panel, and makes reference to a Design Review Panel with approval authority. While it may be intended that the City can establish a design review panel, it is not clear that the legislation as currently formulated would allow the City to compel an applicant to submit an application to a Council appointed design review panel for consideration.

As directed by Council, City staff are currently preparing to pilot an advisory Design Review Panel in the City. It would be desirable to clarify in legislation (Bill 53) that the City's site plan control authority includes the ability to require that select development applications (say over a certain size threshold, or in specific geographic areas) be reviewed by a Council appointed professional design review panel. This advice would then form part of the input into the site plan approval authority, as it is currently structured.

Provisions for a Design Review Panel could be included in Section 114 (10) of Bill 53 (conditions to approval of plans) to recognize that the Panel's advice to staff will form part of the Site Plan Approvals process and recommendations made by the Panel could be included as conditions of site plan approval.

Expanded authority - Community Improvement Plans

Bill 51 addresses the issue of Community Improvement Plans under Section 28 of the *Planning Act.* Under Bill 51 municipal planning and financial capacity for encouraging and stimulating community improvement activities, which support intensification and the development of compact urban form, will be expanded to include:

- Clarifying that new construction and not just renovation of existing buildings can be addressed in CIPs.
- Allowing municipalities to include construction related to energy efficient uses of lands, buildings, structures and facilities (e.g. cogeneration, heat pumps, eco-friendly siting of buildings) within the costs of a Community Improvement Plan.

- Allowing municipalities to register grant or loan agreements on the title of the land so municipalities could increase their ability to enforce agreements and developers could increase their ability to secure upfront financing for their projects (having registered agreements helps with bridge financing and dealings with banks).

The City has also been granted enhanced CIP powers through Section 112 of Bill 53. This section provides for Council to be the approval authority for all Community Improvement Plans in the City of Toronto. Previously, any CIPs that dealt with "bonusing" as defined in the *Municipal Act*, (i.e. CIPs that provided financial incentives in the form of grants or loans to private businesses), had to be approved by the Minister of Municipal Affairs and Housing.

The approval process for CIPs containing financial incentive programs (grants and loans) had been earlier differentiated from that of CIPs dealing with financial tax assistance programs. By way of the omnibus *Brownfields Statute Law Amendment Act*, phased in over time since 2001, all municipalities had acquired the right to approve their own CIPs if these CIPs didn't offer financial incentives or if they only dealt with tax assistance programs.

Under Bill 53, the Minister's approval will no longer be required for any CIPs in Toronto, whether they deal with financial incentive programs or not. However the ability to appeal CIPs to the OMB, will remain in place. That appeal procedure will be the same as that for official plan amendments and is subject to Sections 17 (15) to (22) and (31) to (50) of the *Planning Act.*

Parkland Dedication Policies

Bill 51 contains modifications to the parkland policies under Section 42 of the *Planning Ac*t by adding two new powers. The first empowers the City to refuse an applicant permission to construct a building on a site should payment in lieu of parkland remain outstanding. While this change is important to ensure that cash in lieu payments are made, a request has been made for parallel amendments to the *Building Code Act* regulations to ensure that this section could be made applicable law for the purposes of issuing a building permit.

The second policy addition allows the City to reduce the amount of payment required under certain conditions for sites or lands proposed for redevelopment. The former change is important to ensure that cash in lieu payments are made.

Subdivision Control

There are three changes to the legislation regarding approval of plans of subdivision. Bill 51 has added additional criteria for which approval authorities must have regard in considering draft plans of subdivision, namely "the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy". This new criterion is intended to assist municipalities in implementing the provincial objectives of compact urban form and energy conservation and represents an additional tool with which to influence the efficient design of streets, blocks and buildings.

Under Bill 51, the approval authority (Council) also has an important condition it can now impose. In addition to road dedications, conditions can now include "pedestrian pathways, bicycle pathways and public transit rights of way to be dedicated as the approval authority considers necessary".

Finally, the approval date determining the lapsing of an approval of a subdivision for which conditions have been appealed to the OMB, will now be when the OMB issues its Decision rather than its Order, thereby generally reducing the shelf-life of unregistered subdivision approvals. This change addresses municipal concerns about subdivision approvals that sit in limbo for extended periods of time.

Exempting Energy Undertakings from the Planning Process

In 1998, the Province enacted legislation, the *Electricity Competition Act*, to introduce full competition into Ontario's electricity 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.

As the *Environmental Assessment Act* has historically applied to public sector projects only, and did not automatically apply to private sector projects, in order to fulfill commitments to maintain environmental protection while creating this level playing field, changes to the *Environmental Assessment Act* were also required. 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.

Under Bill 51, the Lieutenant Governor in Council, may, by regulation, exempt from the Planning Act approval process undertakings that relate to energy and have been approved or exempted under the *Environmental Assessment Act*. OPG and Hydro One are already exempt under the current *Planning Act*. This change would allow other new public and private sector energy projects to be exempted through regulation.

The Province has indicated that it will be seeking input from municipalities and other stakeholders regarding the regulation that will implement this legislative change. While the Province's interest in energy is recognized, 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. Staff will closely monitor the development of any draft regulations to implement this legislative change.

Prohibiting and regulating the demolition and conversion of rental properties

Section 111 of Bill 51 will now provide the City with broad powers to prohibit and regulate the demolition or conversion of rental properties containing six or more units and to impose conditions. The exercise of these powers is not limited to planning applications requiring zoning or other planning approvals, but could apply to as-of-right development as well. The City has repeatedly sought these new powers as part of previous submissions to the Province in order to assist with the implementation of the City's housing policies and the new powers are welcome.

One weakness in the proposed legislation, however, is the lack of provision for binding legal agreements to secure the conditions and matters critical to achieving the City's housing objectives. These agreements should be registered on title, binding on successors in title and applicable law for the purposes of building permit approval. This is a critical component of any strategy seeking to secure conditions related to replacement or other matters over time and was a feature of the previous (now repealed) *Rental Housing Protection Act*, (RHPA).

Green Roofs

Section 108 of Bill 53 allows the City to require green roofs and to govern their construction. This power is timely and dovetails with Council's recent adoption of the recommendations embodied in a report to the Roundtable on the Environment dated November 16, 2005 entitled "Implementation Strategies for Green Roofs City Wide".

Green roofs can be dealt with through Section 108 by-laws, through the use of conditional zoning as per Section 113 (2) or as part of the review and approval of the exterior design of buildings assessment done through site plan control under Section 114 of this Act, however, Section 108 provides the broadest authority and does not provide for an appeal to the OMB of a by-law passed under it.

To ensure implementation of the intent of the legislation, clear authority must be established to both require that conditions be satisfied prior to the issuance of a building permit secure any on-going maintenance obligations. In order to provide enforcement capacity for *requiring* the construction of green roofs, Article 1.1.3.3 of the OBC (applicable law) could be amended to provide that the condition must be met prior to building permit issuance. Other options are being investigated by staff at this time. As well, the authority to enter into agreements, binding on successive owners, to secure conditions under this Section of Bill 53 is needed.

It is noted that this feature of Bill 53 contains a clause that the Lieutenant Governor can repeal this section at a date in the future. This suggests that the Province may consider repealing this section if and when it incorporates standards governing the construction of green roofs in the Ontario Building Code. Even if this were the case, however, the City would still wish to retain the right to require provision of green roofs, not merely regulate the standards of their construction. In this future area of "joint" jurisdiction, there is a clear role for the City to determine when it wishes to require a green roof, and what standards should regulate its construction.

There are currently no specific provisions governing construction of green roofs in the Ontario Building Code. While the Ministry of Municipal Affairs and Housing is conducting research that may assist, the development of any by-law governing the construction of green roofs will require technical resources and consultation. The City may, therefore, need to obtain resources to develop options for construction standards. The federal government may also help in this regard. The City's Chief Building Official, Executive Director, Buildings is best qualified to provide further input regarding matters related to a by-law governing the construction of green roofs.

Ontario Heritage Act

While not, strictly speaking, a *Planning Act* reform matter, Section 11(2) in Bill 53 will provide enhanced powers to protect the City's heritage resources. The Act allows for a delay in demolition of "listed" properties (the *Ontario Heritage Act* already allows Council to refuse a demolition application for designated buildings)**.** Under the new Act**,** if the owner of a property that is "listed" on the Inventory of Heritage Properties wants to demolish a building or structure s/he will be required to give the City 60 days notice. This change virtually solves the problem of not being able to designate listed buildings quickly enough to prevent demolition or unsuitable alteration of heritage resources. This is a very significant advance for the City, which has over 3,000 listed properties. The City's Heritage Preservation Section will now have sufficient time, in almost every case, to recommend designation to Council before the time period expires. It is important, however, that this new provision be considered as applicable law under the *Building Code Act* or the Chief Building Official will not be able to refuse the permit under the recent amendments to Bill 124, *Building Code Statute Law Amendment Act, 2002*.

Also important is the change in legislative requirements regarding the giving of notice of Council's intention to designate. The changes will dramatically reduce the costs to the City of designation, and hence improve the ability of staff to bring more "listed" properties under the protection of the OHA as designated buildings.

Conclusions:

Bills 51 and 53 have come a long way in responding to key City issues previously identified in Council's recommendations and by City staff involvement in the planning and OMB reform review process and stakeholder consultation meetings, although specific legislative changes, such as those dealing with OMB reform, have not gone as far as had been recommended by Council.

Several common themes arise out of the legislation:

- The City's Official Plan policies and by-laws will continue to be the primary vehicles for providing specific policy and implementation direction.
- Following the principles established by Bill 53 - any regulations flowing from Bill 53 should be broadly permissive; i.e. the regulations should spell out what is not permitted, otherwise to be understood as being permitted.
- All new powers to regulate land use activity should include the ability to secure matters in a binding legal agreement, registered on title.
- In order to derive full benefit from new powers in Bill 53 relating to the demolition and conversion of rental housing, green roofs, conditional zoning, or site-plan control; and existing powers in the *Planning Act* allowing for conditions to be imposed as part of minor variance decisions, Section 37 or holding by-laws, conditions should be subject to applicable law under *Building Code Act* regulations.

Contact:

Barbara Leonhardt
Director, Policy and Research
Phone: 416-392-8148, Fax: 416-392-3821
Email bleonha@toronto.ca

The Planning and Transportation Committee also submits the report (February 20, 2006) from the Chief Planner and Executive Director, City Planning:

Purpose

To summarize comments raised at a recent Councillors' briefing session regarding Bills 51 and 53.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendation:

It is recommended that the Minister of Municipal Affairs and Housing be advised that Council of the City of Toronto reaffirms its position regarding OMB reform, as recommended in the March 1, 2004 report from the Commissioner of Urban Development Services entitled "City of Toronto Position Regarding Ontario Municipal Board Reform" adopted, as amended, by Council at its meeting on April 15 and 16, 2004, and once again reaffirmed in a further report from the Commissioner of Urban Development Services dated June 21, 2004, entitled "Provincial Planning Reform Initiatives: Consultation Papers on OMB Reform, Planning Act Reform and Implementation Tools and Provincial Policy Statement Draft Policies" adopted by Council on July 21, 21 and 22, 2004.

Background:

A report to Policy and Finance Committee from the City Manager and City Solicitor dated January 12, 2006 and entitled "Bill 51 - *Planning and Conservation Land Statute Law Amendment Act, 2005"* was adopted by Council at its meeting of January 31, February 1 and 2, 2006. The report commented that the Chief Planner would be providing a more detailed technical briefing for Planning and Transportation Committee Members on the land use planning provisions of Bills 53 and 51. This briefing took place on February 15, 2006. The meeting was well attended by Councillors and their staff. Attendees were advised that the Chief Planner would be reporting to the March 6, 2006 Planning and Transportation Committee meeting, advising the Committee of the contents and implications of Bills 51 and 53 as they pertain to land use planning matters.

Comments:

The following comments were raised by Councillors at the technical briefing session. Each comment noted below has been followed by a staff response:

(a) No alternative appeal process has been established for the City of Toronto through Bill 53. The Minister of Municipal Affairs and Housing should be advised that the City of Toronto is not satisfied with the extent of the legislative reform package as it pertains to the OMB.

During the planning and OMB reform stakeholder consultation sessions held in 2004, Council adopted the following recommendations regarding OMB reform that were conveyed to the Minister of Municipal Affairs and Housing:

- there be no de novo hearings;
- the OMB become a true appeal body and not a substitute decision maker;
- there be a leave to appeal process; and
- grounds for appeal be limited to Council acting "unreasonably" or in a manner not consistent with the PPS or not in conformity with Provincial Plans.

All reforms pertaining to the OMB are contained in Bill 51 and no alternative appeal process has been established for the City through Bill 53. While the reforms made in Bill 51 establish a higher standard for decision-making at the municipal level and impose significant limitations on the scope of the OMB's decision-making process, they are not as fundamental as Council had advocated in its submissions to the Province. Recommendation 1 of this report addresses this concern.

(b) The Province should hold municipal decisions at the same level as provincial interests by not requiring that the OMB's decisions "be consistent with" those of Council.

Bill 51 will require that the Board "shall have regard to" Council decisions and any supporting information and materials that Council may have considered in making its decision. Municipal councils will be empowered to require that development applicants provide all and any information Council believes is necessary to make an informed decision at the front end of the approvals process (subject to having in place official plan policies). In discussion with Provincial solicitors, the "shall have regard to" clause is being interpreted as one having serious consideration for Council decisions. In turn, Council's decisions have to be "consistent with" provincial interests and Plans. The consistent thrust of the recent legislation is to have Council, the OMB and other government agencies, hold provincial interests, including the Provincial Policy Statement, to the highest standard in all decision-making. Through Bill 26, the Strong Communities (Planning Amendment) Act, 2004, the Province can declare certain matters under appeal to the OMB to be of provincial interest, and confirm, vary or rescind the OMB's decision on these matters.

(c) Ratepayer groups will not be able to present new evidence to the OMB at any time, but instead be obligated to formally participate in Council's decision-making process, having to provide information and arguments upfront to Council, rather than later on at the OMB.

Allowing certain groups rights to introduce new evidence would not be consistent with the thrust of the legislation, which places greater emphasis on Council's decision making process. The new Bill 51 legislation strongly encourages pre-consultation and the

submission of "complete applications". It expects everyone, including ratepayers and applicants of development proposals to be engaged in the municipal decision-making process at the front-end of the process. It places a greater onus on Council to evaluate all materials, background information and citizen and stakeholder submissions received prior to making its decision. It is this decision that forms the basis of and circumscribes the evidence at a hearing, generally allowing participants to participate on a more level playing field. In permitting new information, the Board will now be obliged to notify Council that it is being given an opportunity to reconsider its decision by making written recommendation to the Board within a time period to be prescribed in regulation. Only Council, as the municipal decision-making authority, is empowered to do so. Providing rights to certain members of the public would detract from this authority.

(d) City councillors are not permitted to be part of local appeal boards.

Section 115 of Bill 53 states that the City cannot appoint anyone to the appeal board who is a City employee, a member of City Council, a member of the Committee of Adjustment or Land Division Committee or a member of a "prescribed" class that will be addressed in regulation form. This restriction has likely been put in place to avoid the perception of conflict. An appeal body should always be seen to be an independent tribunal which might not be the case if elected officials were appointed to it

(e) Certain energy undertakings may be exempted from the Planning Process through Bill 51 regulations.

OPG and Hydro One are already exempt under the current Planning Act. Bill 51 would allow other new public and private sector energy projects or undertakings to be exempted by way of regulation from the Planning Act if they had been through the Environmental Approval (EA) process. The Province has indicated that it will be seeking input from municipalities regarding the regulation that will implement this legislative change. It is incumbent on Council to provide direction regarding the City's position on this matter.

(f) Improving the administrative competency of the OMB has not been addressed in the new legislation.

Ontario's Public Appointment Secretariat is currently conducting a broad administrative review of various provincial government agencies, boards and commissions, including the OMB. As part of the process, the Ministry of Municipal Affairs and Housing has suggested administrative reforms that are designed to create a more transparent, effective and user-friendly Board. These reforms include recommendations:

- encouraging qualified applicants to become OMB members, by posting employment descriptions;
- considering the length of tenure for members beyond the current three year term;
- conducting a review of compensation, to allow the OMB to attract and retain the most qualified professionals; and
- providing formal training on land-use planning issues to all new members at the start of the term, and on an ongoing basis throughout their tenure.

(g) Timing of the implementation of new statutes, especially in terms of their impact on pipeline development applications, such as those impacting employment district lands.

The Province will have transition regulations in place. The status of pipeline applications will also be informed by the status of the City's new Official Plan. Individual applications affected by the legislation will be reviewed by the City Solicitor's legal staff.

Conclusions:

The City Manager and City Solicitor will continue their review of Bill 53 which includes further analysis of the Bill, collecting comments from City staff, and discussions with provincial staff. The Chief Planner will continue leading a similar exercise around Bill 51 and providing Planning and Transportation Committee with a status update report at an appropriate time in the Bill 51 legislative and regulatory approvals process.

Contact:

Barbara Leonhardt
Director, Policy and Research
Phone: 416-392-8148
Email bleonha@toronto.ca

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The following Members of Council addressed the Planning and Transportation Committee:

- Councillor David Shiner, Ward 24 Willowdale; and
- Councillor Michael Walker, Ward 22 St. Paul's.

Appendix 1
Suggested Changes Bill 53

Section	SUGGESTED CHANGE
Section 108 – New Power Requiring and Governing Construction of Green Roofs	1. Allow for any conditions relating to green roofs to be dealt with as agreements that can be entered into and registered on title to ensure ongoing obligations are met by current and successive owners. 2. Revise Ontario Regulation 305/03 made under the *Building Code Act* to make conditions relating to the provision of green roofs and green roof agreements applicable law for the purposes of issuing a building permit.

Section	SUGGESTED CHANGE
Section 113 (2) – New Power – Conditional Zoning	1. Revise Ontario Regulation 305/03 made under the *Building Code Act* to make conditions relating to the use of Section 113 (2) applicable law for the purposes of the issuance of a building permit. 2. Seek a permissive approach to the regulations for conditional zoning, listing what conditions are prohibited rather than what is to be permitted. The regulation should not preclude Toronto from having conditions that deal with the following range of matters: - environmental sustainability; - energy efficiency; - green technologies (such as green roofs); - waste management; - transportation related improvements; - travel demand management; - conservation of natural heritage; - heritage preservation; - public art; - housing matters, (including the mix of housing types, affordable housing, securing existing rental, rental replacement); - community services and facilities.
Section 114 – Expanded Power – Site Plan Control	1. Revise O.Reg. 305/03 to make conditions of site plan approval and site plan agreements applicable law for the purposes of the issuance of a building permit. (Currently, only Council or OMB approval of plans and drawing under Section 41 of the *Planning Act*, constitutes applicable law). 2. Revise Section 114 (5) 2 to refer to the conceptual design and massing of the proposed site, buildings and structures; to the general organization of interior uses at the ground floor level and any floor level to which members of the public have access, including the location of doors, windows and service areas and to the relationship of the proposed building to adjacent buildings, natural and designed landscapes, public art, streets, and exterior areas to which members of the public have access. 3. Technical correction - add a provision, currently contained in the *Planning Act*, but omitted in Bill 53, to require drawings for buildings to be used for residential purposes containing less than 25 dwelling units if the proposed building is located in an area designated in the official plan as an area wherein such drawings may be required.

Section	SUGGESTED CHANGE
	4. Request authority to incorporate peer review of select development applications by a Design Review Panel(s) as a requirement of the site plan review process under Section 114 (10).
Section 115 - New Power Appeal body for local land use planning matters	1. The City should be able to establish a local appeal board with a broader mandate to deal with appeals of other development applications whose impact is also purely "local" in nature, e.g. appeals of conditions of subdivision and site plan approvals.
Section 111 – New Power Control of demolition and conversion of rental housing	1. Allow for any conditions relating to be secured as agreements that can be entered into and registered on title to ensure ongoing obligations are met by current and successive owners. 2. Ensure that the exercise of this authority and fulfillment of conditions are recognized as applicable law under the *Building Code Act* for the issuance of a building permit.
Section 11 (2) pertaining to the *Ontario Heritage Act*	1. Request that this Section be recognized as applicable law under the *Building Code Act*. NB: This section permits the City to delay the issuance of a demolition permit for 60 days for any property that is listed on the register of heritage properties, but is not designated under Part IV or V of the *Ontario Heritage Act*.

Appendix 2
Recommended Changes to Bill 51

Section	Recommended Changes
Section 10(4) relating to Complete Applications	Exempt Toronto from the requirement to include complete application requirement policies in the OP. It should be sufficient for the City to pass a by-law, following appropriate public consultation, setting out its requirements for various applications, for example, by approving the City's "Building Toronto Together" Development Guide.
Section 6(7.1) dealing with	The *Planning Act* should be amended to disallow appeals to the

Section	Recommended Changes
matters that cannot be appealed to the OMB	OMB of any OPA specifically enacted to bring local official plans into conformity with Provincial Growth Plans.
Sections 45(9) (minor variance), Section 53(consents), Section 36 (holding by-laws), Section 37 (height and density) and Section 41 (site-plan approval) relating to authority for conditions imposed by the above-noted sections to be subject to agreements that can be registered on title and be made applicable law for the purposes of issuing a building permit	1. Request explicit authority to allow the City to enter into agreements and register agreements on title for Section 45(9) (minor variance) and Section 53 (consents) of the *Planning Act.* 2. Request explicit authority to allow the City to register agreements for Section 36 (holding by-laws) of the *Planning Act.* 3. Request that conditions reflected in agreements for Section 45(9), Section 53, Section 36, Section 37 and Section 41 of the *Planning Act*, be considered applicable law under the *Building Code Act* for the purposes of the issuance of a building permit.

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City Council – April 25, 26 and 27, 2006

Council also considered the following:

- *Report (April 13, 2006) from the Chief Planner and Executive Director, City Planning [Communication 15(a)];*

Subject: *Revised Appendix for a Report dated February 13, 2006 from the Chief Planner and Executive Director, City Planning entitled "Bill 51 – Planning and Conservation Land Statute Law Amendment Act, 2005 and Land Use Provisions of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005"*

Purpose:

To revise Appendix 2 of a Report before Council dated February 13, 2006 titled "Bill 51 - Planning and Conservation Land Statute Law Amendment Act, 2005 and Land Use Provisions of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005" in order to consolidate positions previously taken by Council with respect to reforming the Ontario Municipal Board (OMB).

Financial Implications and Impact Statement:

This report has no direct financial implications.

Recommendations:

It is recommended that:

(1) the Minister of Municipal Affairs and Housing be advised that Bill 51 should be amended to include the changes noted in the revised Appendix 2 attached to this Report; and

(2) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On March 6, 2006, Planning and Transportation Committee adopted a report from the Chief Planner and Executive Director, City Planning, advising Council of the contents and implications of Bills 51 and 53 as they pertain to land use planning matters, with an additional recommendation, requesting the Chief Planner to report directly to Council with "a revised Appendix 1 which would include the previously adopted positions of Council."

Bills 51 and 53, have for the most part, addressed Council's position regarding planning and OMB reform. The key exception has been the Province's position, embodied in Bill 51 legislation, regarding the role of the OMB.

It is noted that these previously adopted positions of Council should be added to Appendix 2 of the report, which deals with recommending changes to Bill 51, rather than Appendix 1 of the report, which deals with Bill 53.

Comments:

Appendix 2 of the Report in question, recommended specific changes to Bill 51 that should be brought to the attention of the Minister of Municipal Affairs and Housing and included in the City's submission to the Standing Committee of the Legislature that will be considering Bill 51. A discussion regarding the shifting role and scope of the OMB was contained in the body of the report, along with the comment that: "The reforms contained in Bill 51 establish a higher standard for decision-making at the municipal level and impose significant limitations of the scope of the OMB's decision-making process. The reforms, however, are not as fundamental as Council had advocated in its earlier submissions to the Province". In the formal consultation process around OMB reform, leading up to Bill 51, Council had recommended that:

- *there be no "de novo" hearings;*
- *the OMB become a "true appeal" body of municipal decisions only and not a substitute decision maker;*
- *there be a "leave to appeal" process; and*
- *grounds for a hearing de novo be limited to Council acting "unreasonably" or in a manner not consistent with the PPS or not in conformity with Provincial Plans.*

Conclusions:

Further to the Planning and Transportation Committee's motion, Council's recommendations regarding the role of the OMB, have been added to a revised Appendix 2, attached to this report.

Appendix 2 of the report before Council, dated February 13, 2006, titled "Bill 51 - Planning and Conservation Land Statute Law Amendment Act, 2005 and Land Use Provisions of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005" has been revised to include the following:

1. *The OMB process should be further circumscribed to be a review or "true appeal" of municipal planning decisions only.*

2. *There should be a leave to appeal process and that grounds for hearings "de novo" be limited only to Council acting "unreasonably" or in a manner not consistent with the PPS or not in conformity with Provincial Plans.*

Contact:

Barbara Leonhardt
Director, Policy and Research
Phone: 416 392 – 8148, Fax: 416 392 – 3821
Email bleonha@toronto.ca

List of Attachments:
Revised Appendix 2 – Recommended Changes to Bill 51

Appendix 2 - Revised
Recommended Changes to Bill 51

Section	***Recommended Changes***
Section 10(4) relating to Complete Applications.	*Exempt Toronto from the requirement to include complete application requirement policies in the OP. It should be sufficient for the City to pass a by-law, following appropriate public consultation, setting out its requirements for various applications, for example, by approving the City's "Building Toronto Together" Development Guide.*
Section 6(7.1) dealing with matters that cannot be appealed to the OMB.	*The Planning Act should be amended to disallow appeals to the OMB of any OPA specifically enacted to bring local official plans into conformity with Provincial Growth Plans.*

Section	***Recommended Changes***
Sections 45(9) (minor variance), Section 53(consents), Section 36 (holding by-laws), Section 37 (height and density) and Section 41 (site-plan approval) relating to authority for conditions imposed by the above-noted sections to be subject to agreements that can be registered on title and be made applicable law for the purposes of issuing a building permit .	*1. Request explicit authority to allow the City to enter into agreements and register agreements on title for Section 45 (9) (minor variance) and Section 53 (consents) of the Planning Act.* *2. Request explicit authority to allow the City to register agreements for Section 36 (holding by-laws) of the Planning Act.* *3. Request that conditions reflected in agreements for Section 45(9), Section 53, Section 36, Section 37 and Section 41 of the Planning Act, be considered applicable law under the Building Code Act for the purposes of the issuance of a building permit.*
Various Sections in Bill 51 as these relate to the role of the OMB as an appeal body for land use planning matters.	*1. Request that the OMB process be further circumscribed to be a review or "true appeal" of municipal planning decisions only.* *2. Request that there be a leave to appeal process and that grounds for hearings "de novo" be limited only to Council acting "unreasonably" or in a manner not consistent with the PPS or not in conformity with Provincial Plans.*

- *Report (April 12, 2006) from the Chief Planner and Executive Director, City Planning [Communication 15(b)];*

Subject: *Implementing a Local Appeal Body (LAB) for Local Land Use Planning Matters as per Section 115 of Bill 53 - Stronger City of Toronto for a Stronger Ontario Act, 2005 - Anticipated Cost Implications*

Purpose:

This report provides an overview of anticipated cost implications associated with operating a local appeal body (LAB) for local land use planning matters.

Financial Implications and Impact Statement:

There are no immediate financial implications associated with this report. However, there would be as yet undetermined future year financial impacts, in the event that Council chooses to

implement a LAB for local land use planning matters. Financial implications would be informed by the LAB's governance model, the City's jurisdictional and administrative involvement in supporting the LAB, including operating resource requirements, and cost recovery options.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendation:

It is recommended that this report be received for information.

Background:

Throughout the planning and OMB reform stakeholder consultation periods and also during more recent consultations around City of Toronto Act amendments, Council has continued to reiterate its request to the Minister of Municipal Affairs and Housing, to enable the City of Toronto to establish its own local appeal body for local planning matters.

The Province recently gave second reading to two Bills which have an impact on this request - Bill 51, Planning and Conservation Land Statute Law Amendment Act, 2005 and Bill 53 – Stronger City of Toronto for a Stronger Ontario Act, 2005. Section 115 of Bill 53, gives Toronto the unconditional right to establish a local appeal body for certain local land use planning matters, namely minor variance applications and consents. Bill 51 gives all other municipalities the right to establish similar local appeal bodies but subject to each given municipality meeting certain "prescribed" conditions that will be set out in regulation form.

Although City Council has been advocating for a local appeal body to replace the Ontario Municipal Board (OMB) as the appeal body for all planning applications, the proposed legislation has not gone this far: both Bills 51 and 53 stipulate that where there is a related appeal that has previously been made to the OMB and has not been finally disposed of, or where there is a related appeal dealing with an official plan amendment, zoning by-law, conditions of subdivision approval and/or site plan approval, then the entire appeal is "bumped up" to be heard by the OMB.

On March 6, 2006, Planning and Transportation Committee adopted a report from the Chief Planner and Executive Director, City Planning, advising Council of the contents and implications of Bills 51 and 53 as they pertain to land use planning matters, with an additional recommendation, requesting the Chief Planner to report directly to Council regarding "the anticipated costs (gross and net) of implementing Section 115 "New Power – Appeal Body for Local Land Use Planning Matters".

It should be noted that the March 6th, 2006 report from the Chief Planner includes a request to broaden the City's hearing powers under Section 115 of Bill 53 to other development applications whose impact is also purely "local" in nature, such as conditions of site plan approval and subdivision agreement. However for the purposes of this report, the cost assessments provided are based on the assumption that the local appeal body would deal only with appeals relating to minor variance and consent applications.

Comments:

In response to the Planning and Transportation Committee's request, this report provides a simplified overview of the costs (gross and net) associated with implementing a local appeal body or LAB. The report does so based on assumptions informed by:

(a) Legislative parameters set by the Province.
(b) Governance models for quasi-judicial bodies or administrative tribunals.
(c) Budgetary requirements, practices, function and workloads of the City's Committees of Adjustment and Municipal Licensing Tribunal and the Province's Ontario Municipal Board.
(d) Average number of Committee of Adjustment and Consent decisions appealed per year.

(i) Legislative Parameters

Section 115 of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005, enables the City of Toronto to constitute by by-law one local appeal body for local land use planning matters such as minor variance applications and consents.

The local appeal body would be authorized to hear appeals under specified provisions of the Planning Act and would have all the powers and duties of the OMB under that Act, for these types of appeals.

The legislation states that the City cannot appoint anyone to the appeal board who is a city employee; a member of City Council; a member of the Committee of Adjustment or Land Division Committee; or a member of a "prescribed" class (as may be set out in provincial regulation form). The Minister of Municipal Affairs and Housing reserves the right to make other regulations regarding the LAB by prescribing eligibility criteria and qualifications, restrictions, powers to hear appeals, exceptions, disputes, and other practices and procedures.

Discussions regarding the content and scope of these proposed regulations are currently underway with the Province. It is conceivable that most of the requirements regarding the length of tenure, the composition of LAB and the various procedures dealing with the fulfillment of the LAB's mandate and code of conduct, will, in the end, be able to be achieved through local by-laws passed by Council rather then through provincial regulations.

(ii) Governance Model

Assessing the costs of implementing a LAB for this report has been done in the context of the comprehensive review of City Agencies, Boards, Commissions and Corporations (ABCCs) undertaken by the City Manager, which has addressed a number of governance issues respecting existing ABCCs. This includes a detailed review of other administrative tribunals such as the Toronto Licensing Tribunal, and Council's adoption of an enhanced citizen nominations process and updated remuneration and expense reimbursement policies for ABCC members.

Based on governance models highlighted through the City Manager's review, discussions held with informed civic staff, and a cursory review of OMB rules and practices, the following principles have been identified to guide the implementation of LAB – accessibility, transparency, fair and consistent outcomes, competency, ethical behaviour, independent and timely decision-making, and codification of decisions. LAB's decisions would have to withstand judicial review. Its rules of practice and procedure would also fall within the scope of The Statutory Power Procedures Act and its members would be bound by The Municipal Conflict of Interest Act.

In recent years, the Courts have shown greater deference to administrative tribunals and their decisions. This is based not only upon the expertise of the tribunal, but also upon its independence from outside influences. While the City's LAB could be constituted and appointed by by-law at the pleasure of Council, it would need to make its decisions independently, unfettered by Council. It would also need to maintain an arms-length relationship with the City's Committees of Adjustment and their support staff.

In order to be seen to be independent to members of the public, LAB would require its own panel members, dedicated support staff, operating budget, workspace and meeting rooms and legal counsel. Jurisdictionally, LAB could be attached either to the City Clerk, Court Services or operate as a completely separate and independent, self-administered entity. In any case, in following recommendations recently adopted by Council as part of the City's 2006 Operating Budget report, the City Clerk would be required to provide an "impact statement" addressing issues relating to the City's capacity to resource and accommodate a local administrative tribunal or appeal body, such as LAB.

The costs of implementing a LAB, are also affected by the level of cost recovery. For instance, appeals to the Municipal Licensing Tribunal do not involve a fee because costs for administering licenses and the hearing process are covered by license fees.

In setting appeal fees for LAB, applicants' continued access to the exercise of their appeal rights will need to be upheld. The City's application fees for Committee of Adjustment minor variance and consent applications, (which will increase in 2007 and vary in amount according to the type of application), will need to be considered in setting limits on appeal fees. The historical precedent set by the OMB with its $125.00 application fee for land use planning matters, will also need to be taken into account.

(iii) Number and Nature of Committee of Adjustment Appeals

The number and nature of appeals are an important consideration in determining the number of LAB members required to hear appeals, anticipated length and complexity of appeal hearings, meeting formats and support staff requirements.

The average annual number of minor variance and consent applications considered by the City's Committees of Adjustment, is around 3,500. Of this total, just over 10 percent or around 400 applications are appealed to the OMB.

To better understand the nature of appeals of minor variance applications, City Planning staff reviewed 205 minor variance applications appealed to the OMB between August 2003 and October 2004 and found that:

- *About 75% of the appealed applications are for low rise residential properties, with an additional 8% and 6% respectively for commercial and high-rise residential properties*

- *About half of the appeals are in the former City of Toronto, with an additional 20% in former North York and 10% in former Etobicoke*

- *Minor variance applications refused by C of A are more likely to be appealed to the OMB than applications approved by the C of A*

- *Minor variance applications refused by C of A and appealed to the OMB tend to be more complex than the applications approved by C of A and appealed to the OMB.*

(iv) OMB Experience

OMB hearings have varied in length to between half a day to four days for complex appeals that have a strong public interest, involve numerous participants and expert witnesses. OMB staff indicated that the majority of hearings, however, occurred within a one day period. The OMB assigns one panel member to hear appeals of minor variance and consent decisions. Support staff are not present at these hearings.

In preparing cost estimates for this report, a review was conducted of the City's Committees of Adjustment, Municipal Licensing Tribunal and the Province's Ontario Municipal Board and their budgetary requirements, practices, function and workloads. A key difference between the City and the OMB, is that the Council primarily appoints citizens to its boards and tribunals who perform their "public service" duties on a part-time basis. The OMB, on the other hand, is a quasi-judicial body devoted to hearing appeals by full time, salaried panel members who conduct hearings during normal business hours.

(v) LAB Overview and Budget Profile

The following profile has been prepared which forms the basis for LAB's estimated budget:

Member Composition and Workload

<u>Five part-time paid panel members</u> with a case load of 80 hearings per year, translating to 80 days of hearings and 40 days of preparation and decision-writing time.

Assumptions:

- *Qualified part-time citizen appointees*
- *One panel member per hearing*
- *Total case load of 400 appeals per year divided amongst the five panel members and based on one-day hearings*

- *80 hearing days per year*
- *Additional 200 days per year (40 days per member) to accommodate case preparation, decision writing time, training and business meetings*

Member Remuneration and Expenses:

Stipend of $42,000 per member per year and expenses for parking and mileage of $400 per member per year.

Remuneration is based on a per diem of $350 for 400 actual hearing days and 200 additional days reflecting case preparation, decision-writing time, training and business meetings, for a total of 600 days times $350, equaling $210,000 per year or $42,000 per member per year. The Chair would receive an additional $2,000 for a total of $44,000 per year in recognition of additional duties. Expenses, which in the case of Committee of Adjustment members have included mileage and parking, have traditionally been quite low for C of A members, averaging $250 per year. LAB members' yearly expenses have been estimated at totaling $2,000, or $400 each per year. Summary of costs: $210,000 stipend for members and $2,000 for expenses. Additional $2,000 for the Chair.

Support Staff Requirements, Salaries and Benefits:

Staff would provide administrative support, prepare materials for hearings, schedule hearings, arrange for rooms, prepare subpoenas, track decisions. The skills and work processes needed to support the LAB have been based on the skill set requirements demonstrated by the City's Committees of Adjustment staff. The LAB support staff is proposed to include a permanent complement of eight staff members as follows: staff manager and LAB secretary-treasurer; senior planner; four assistant planners and two support assistants. Salaries and benefits have been based on the mid-range of 2006 salary levels. Summary of costs: $481,500 for support staff salaries and $117,968 in benefits for a total of $599,468.

Operational and Overhead Expenditures:

Office supplies and equipment, copying, printing, postage and courier, servicing of equipment, equipment rentals, IT support , as gleaned from the operating budgets of the City's Committees of Adjustments embedded within the City Planning Division, and the assumption that staff and LAB members workspace and hearing rooms can be accommodated within existing city owned space. The costs of providing on-going training to LAB members and staff, have not been factored into these expenditures. Summary of costs: $230,000 for office supplies and other operating expenses.

Start-Up Costs:

One-time only set-up costs for staff and LAB members to create a work environment including workstations, computers and software, telephone installations and data jacks, have been estimated at $8,600 per support staff or LAB member. Summary of costs: $111,800 to create a LAB office for staff and LAB members.

Outside Legal Counsel:

The LAB would need to consult or get advice from outside legal counsel from time-to-time. This service could be purchased by the City as it does with other matters or files and could reasonably be based on a lawyer's fee of $500 per hour. On the assumption that a portion of the appeals would require some legal advice, the cost of providing outside legal counsel would total around $100,000 per year. Outside legal counsel costs could rise in the event of an appeal, with leave, to Divisional Court, of a LAB decision, on a point of law. Summary of costs: $100,000 cost estimate for outside legal counsel to be retained on a per need basis.

Gross costs:

** Yearly LAB Expenditures*

Members stipend	*$212,000*
Members expenses	*$2,000*
Support staff salary	*$481,500*
Support staff benefits	*$117,968*
Office Operating Expenses	*$230,000*
Outside Legal Counsel	*$100,000*
Total	*$1,143,468*

** Budget noted above, excludes the one-time start up costs for LAB of $111,880.*

Net Costs:

A net cost figure of $50,000 has been based on recovering costs for 400 applications at $125 per application, reflecting the OMB's current application fee structure. Summary of net costs: $1,093,468 per year.

Average Cost per Hearing:

Based on the above-noted net cost assessments, the per hearing costs for LAB would be $2734. By way of general comparison, cost estimates (based on 2004 figures), were $3,100 per hearing for the OMB and $3,500 for the Municipal Licensing Tribunal.

Conclusions:

This report provides a general overview of the costs (gross and net) associated with implementing a local appeal body (LAB) further to enabling legislation set out in Section 115 of Bill 53. More accurate cost implications, derived from a detailed assessment of LAB governance and operating options, could vary outcomes. However, an initial assessment indicates that gross costs for LAB could hover just over one million dollars annually and the net costs per hearing would be just over $2,700. Raising application fees would, of course, lower net costs.

Contact:

Barbara Leonhardt, Director, Policy and Research
Phone: 416-392-8148; Fax: 416-392-3821; Email bleonha@toronto.ca

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- *Report (April 18, 2006) from the Chief Planner and Executive Director, City Planning [Communication 15(c)]; and*

Subject: *Transferring Authority for Council to Establish Complete Application Requirements from Bill 51 – Planning and Conservation Land Statute Law Amendment Act, 2005, to Bill 53 – Stronger City of Toronto for a Stronger Ontario Act, 2005*

Purpose:

To seek Council's endorsement for an alternative to the authority for complete applications proposed in Bill 51, to be set out in Bill 53 and specifically allowing Council to adopt complete application requirements through by-laws passed by Council rather than amendments to the Official Plan.

Financial Implications and Impact Statement:

This report has no direct financial implications.

Recommendations:

It is recommended that:

(1) *the Minister of Municipal Affairs and Housing be advised that Council recommends that the Bill 51 requirement to establish complete application policies in official plans not apply to the City of Toronto and that any legislation and related regulations addressing the matter of complete applications for Toronto instead be set out in Bill 53;*

(2) *the provisions in Bill 53:*

(a) *allow the City to establish complete application requirements through by-laws of Council, with proper Notice but with no appeal to the OMB; and*

(b) *allow that such by-laws follow Notice requirements that are either set out by local by-laws or alternatively prescribed by provincial regulation, in order to ensure proper notification to the public of complete application requirements and revision thereto;*

(3) *the Minister of Municipal Affairs and Housing be requested to consult with City staff in his preparation of the Bill 53 regulations relating to complete applications;*

(4) *the request for complete application requirements to be enshrined in Bill 53 be referred to the City Manager and City Solicitor for consideration in their preparation of a submission to the Standing Committee of the Legislature considering Bill 53; and*

(5) *the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.*

Background:

Bill 51 - Planning and Conservation Land Statute Law Amendment Act, 2005 stipulates that provisions outlining what is meant by a "complete application" are to be set out in the Official Plan for all levels of the application process, be they official plan amendments, zoning by-laws, plans of subdivision, consents, or site plans. Once Official Plan policies are in effect, Council will be able to refuse to accept or further consider applications until all information or materials that it considers necessary, have been received. The legislated timeframes for processing an application will not commence until Council is satisfied that complete information and fees have been received.

The Province is also revising the minimum standards for a complete application in its existing regulations dealing with these requirements. Any additional municipal requirements beyond this new minimum will need to be spelled out in official plan policies, which can be appealed to the OMB.

Once Official Plan policies are in place, in the case of a dispute between the municipality and the applicant regarding application requirements, the applicant or Council will be able to make a "motion for directions" to have the OMB determine if the information and material required by Council has been provided.

During the planning and OMB reform consultation period, Council had recommended that the requirement to establish complete application information policies in the City's Official Plan was onerous and not desirable given the complex nature of applications in the City. The difficulty would come in crafting detailed official plan policies around complete application requirements for a variety of application types and the anticipated need to amend those policies whenever a development proposal did not fit the pre-determined list of requirements. Council felt that it should be sufficient to pass by-laws, after a proper public hearing, setting out complete application requirements using the requirements outlined in the "Building Toronto Together" Development Guide as the basis for these by-laws.

During the most recent stakeholder consultations around Bill 51 regulations, other municipalities represented around the table were not concerned with having complete application requirements ensconced in their Official Plan. Toronto may be unique in its complex range and volume of planning development applications making the prospects that Bill 51 will be amended to accommodate Toronto's unique interests and concerns slim.

Comments:

Bills 51 and 53 have both received second reading. Standing Committee deputations with regard to Bill 53 – Stronger City of Toronto for a Stronger Ontario Act, 2005 are commencing shortly. It would be timely for Council to adopt a position that authority for Toronto to establish complete application requirement provisions and related regulations be set out in Bill 53.

In order to enable a "made for Toronto" solution to the matter of codifying complete application requirements, the legislation should provide that Toronto's complete application requirements could be adopted by Council by-law, with no appeal to the OMB. Council has already established, through the "Building Toronto Together – A Development Guide", that a

reasonable set of requirements can be developed through a consultative process. The Guide, for example, could be appended to a by-law and stand as Council's expectations for complete applications. Through this mechanism, greater certainty for applicants regarding complete application requirements could be balanced with the need for flexibility to accommodate changing requirements during the development review and approval process.

The rights of applicants would still be safeguarded since disputes regarding specific requirements as these relate to an individual application would continue to be adjudicated by the OMB when "the person or public body or the council" made a "motion for directions" to the Board, as provided for in Bill 51.

Notice requirements could be put in place to ensure that the public is informed of and could make deputations regarding any changes to the complete application requirements contained in the City's by-laws and future revisions to these requirements.

Conclusions:

In order to continue with a development approval process that works for the City, there needs to be an alternative means of recognizing complete applications requirements that does not involve the need for official plan polices. Transferring authority for complete applications from Bill 51 to Bill 53 and providing for a process of adopting complete application requirements by local by-laws, is the solution best suited for Toronto's development approval process. In order to ensure accountability and transparency, notice requirements dealing with complete application revisions can also be set out by Council by-law or prescribed by provincial regulations stemming from Bill 53.

This report has been prepared in consultation with the City Manager and City Solicitor, who concur with the recommendations. Upon their adoption, report recommendations would be referred to the City Manager and City Solicitor for consideration in their preparation of a submission to the Standing Committee of the Legislature considering Bill 53.

Contact:

Barbara Leonhardt
Director, Policy and Research
Phone: 416-392-8148
Fax: 416-392-3821
Email bleonha@toronto.ca

- *Report (April 24, 2006) from the Chief Planner and Executive Director, City Planning [Communication 15(d)].*

Subject: *Maintaining Appropriate Municipal Approvals for Energy Facilities - Implications of Bill 51, Planning and Conservation Land Statute Law Amendment Act, 2005*

Purpose:

To respond to the request of Planning and Transportation Committee to report directly to Council to identify ways of appropriately maintaining municipal approvals for energy facilities, including renewable resources, in the context of Bill 51.

Financial Implications and Impact Statement:

This report has no direct financial implications.

Recommendations:

It is recommended that:

(1) the Minister of Municipal Affairs and Housing be advised that Council recommends that the Minister not seek to exempt any further energy undertakings from the provisions of the Planning Act as is currently proposed under Section 23 of Bill 51, given that the environmental assessment (EA) process is poorly suited to identifying and addressing site-specific and local land-use impacts of development, including energy projects, facilities or undertakings;

(2) the Minister of the Environment be advised that Council recommends that the Environmental Assessment Act include the requirement that energy undertakings be subject to an evaluation under the City's site-plan control and zoning processes and that this evaluation should occur in tandem with the environmental assessment;

(3) the Chief Planner and Executive Director, City Planning Division be directed to develop urban design guidelines for both large and small scale energy undertakings;

(4) the Chief Planner and Executive Director, City Planning Division be directed to ensure that the City's Zoning By-laws contain provisions to regulate energy projects, including sustainable and green energy projects; and

(5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Context:

On March 6th, 2006, the Planning and Transportation Committee adopted a report from the Chief Planner and Executive Director, City Planning, advising Council of the contents and implications of Bills 51 - Planning and Conservation Land Statute Law Amendment Act, 2005 and 53 - Stronger City of Toronto for a Stronger Ontario Act, 2005 as they pertain to land use planning matters, with an additional recommendation, requesting the Chief Planner to report directly to Council on "ways to deal with appropriate municipal approvals on energy facilities, including renewable resources".

The request for a further report arose in part by a proposed Bill 51 provision that would authorize the Lieutenant Governor in Council to exempt by way of regulation, energy undertakings that have been approved or exempted under the Environmental Assessment Act from the Planning Act approval process. The Ontario Power Generation Corporation (OPG) and Hydro One are already exempt under the current Planning Act; this proposed change would exempt other public and private sector energy projects.

With respect to land-use planning, the importance of providing opportunities for increased energy generation, supply and conservation, including alternative energy systems and renewable energy systems has been recognized in the recently approved Provincial Policy Statement (PPS). The PPS also speaks to the link between municipal land use and development patterns and the provision, orientation and design of alternative or renewable energy sources. It should be noted however that discussions around the land use planning impacts of exempting other energy facilities from the Planning Act have never been part of the stakeholder consultation process around planning reform that led to the new PPS and the introduction of Bills 51 and 53.

With respect to environmental planning, recent initiatives to improve and streamline the Environmental Assessment Act have provided a comprehensive assessment of issues relating to environmental mitigation of different types of "undertakings", including energy undertakings, but not issues relating to the impact of those undertakings on local land use planning matters.

Background:

Provincial Interest in Sustainable Energy Production

In 2003, the newly elected Liberal government committed to close all coal-fired electrical stations in the province by 2009 in an effort to reduce smog within the urban regions of the province. In addition, the Province also committed to replace lost generating capacity and address growing energy demands through the development of sustainable and green energy technologies. The Province has established a target of having five per cent of all electrical generating capacity from renewable resources by 2007 rising to ten percent by 2010.

Part of this process includes reforming the provincial Environmental Assessment Act as outlined in a report released by the Ministry of the Environment in March of 2005 entitled "Improving Environmental Assessment in Ontario: A Framework for Reform". This report recommended (amongst other matters) that all statutory decisions under the EA Act be "consistent with" the PPS as a means of creating a streamlined EA process. Other initiatives being undertaken by the provincial government include:

- *Maximizing existing major generation and transmission infrastructure such as expansion of the Adam Beck Hydro Electric Generating complex in Niagara Falls;*
- *Implementing a smart metering program;*
- *Building a culture of conservation with the creation of a Conservation Bureau through the Electricity Restructuring Act, 2004;*
- *Reviewing the Ontario Building Code to enhance energy efficiency; and*
- *Implementing agreements to purchase power from nineteen renewable energy projects which include wind, water, biomass, solar and geothermal generation.*

Providing enough electrical supply to accommodate projected population and economic growth is a key goal of the Province's energy initiatives. In an effort to ensure that growing energy needs are met in the most efficient manner possible, the Province is seeking to maximize its existing energy infrastructure in addition to adding new generating capacity. One way to meet this goal is to direct projected population and employment growth into existing built-up urban areas such as the Greater Toronto Area, where much of the existing infrastructure is currently focussed. To achieve this and other environmentally sustainable goals, ensuring municipalities have the tools and abilities to direct growth to existing built-up areas has become an important provincial initiative. Many of these tools will be implemented through new legislation dealing with reforming the planning process, providing for stronger municipal decision-making powers and creating provincial growth management plans.

The EA Process and Energy Undertakings

In 1998, the Province enacted the Electricity Competition Act, to introduce full competition into Ontario's electricity system and create a level playing field with respect to regulatory requirements for maintaining and enforcing its standards for environmental protection in a competitive electricity market.

The Environmental Assessment Act has historically applied to public sector projects only, and did not automatically apply to private sector projects. In order to fulfill commitments to maintain environmental protection while creating this level playing field, changes to the Environmental Assessment Act were also required. As a result, the Ministry of the Environment developed new environmental assessment requirements for electricity projects which apply <u>equally</u> to public and private sector proponents, as follows:

Category A Projects: Current environmental assessment (EA) requirements for electrical projects are contained within the "Guide to Environmental Assessment Requirements for Electricity Projects". The guide 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 attached Appendix 1: Electricity Project Classification Chart. Category A projects (those that are expected to have minimal environmental impacts such as solar generators, wind turbines less than 2 megawatts (MW) and natural gas facilities less than 5 MW) are not subject to the requirements under the EA Act but they are subject to any other applicable legislative requirements, which include the Planning Act and its associated provisions. It should be noted however, that anyone can request the Minister of the Environment to make a Category A project subject to the EA Act.

Category B Projects: Category B projects are those that have potential environmental effects that can likely be mitigated. As such, they are subject to the EA Act but may be exempted provided they complete the "Environmental Screening Process". During this process the applicant must answer a series of questions 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 Cultural, Aboriginal, and Other. Although the questions take into account some land use planning matters, (such as general effects on the health and welfare of the community), they do so only in passing. An EA process is triggered when the project fails to meet the requirements of the screening process.

Category C Projects: Category C projects are large scale projects (i.e. hydro electric stations) with known environmental impacts and as such are subject to the requirements under the EA Act.

Under current legislation, energy projects falling within any of these categories are subject to the Planning Act, unless they fall under other superseding legislation providing for Planning Act exemptions, such as through the Electricity Act, 1998.

Bill 51 and Proposed Exemption of Certain Energy Undertakings from the Planning Act

Under the proposed Bill 51, the Lieutenant Governor in Council, may, by regulation, exempt from the Planning Act approval process undertakings that relate to energy that have been approved or exempted under the Environmental Assessment Act. As previously noted, OPG and Hydro One are already exempt under the current Planning Act. This change would allow other new public and private sector energy projects to be exempted through regulation. Although the Province has recently indicated that it will be seeking input from municipalities and other stakeholders regarding possible additional exemptions to be added to the regulation, this consultation has not been tied in any comprehensive manner to either the review of the Planning Act, or the review of the Environmental Assessment Act. The evaluation process for energy projects as described above focuses on identifying environmental impacts and potential mitigation measures. Land use and/or site specific issues are not adequately considered during the process. It cannot be assumed that low energy producing sustainable projects have less land use or site specific impacts.

Comments:

In addressing "ways to deal with appropriate municipal approvals on energy facilities, including renewable resources" its clear that the Planning Act tools should continue to play a role in the approval process of all energy projects or undertakings.

Although energy undertakings may be subject to either an environmental screening and/or a full EA evaluation such processes are limited to identifying potential environmental impacts and mitigation options. Land use, site plan and other planning issues are not evaluated and as such an EA process is not an appropriate vehicle for the identification of planning related issues.

While the Province's interest in expediting energy undertakings or projects is recognized, a blanket exemption would not address legitimate local interests, especially with respect to matters assessing local environmental impacts, official plan land use policies and zoning by-law regulations and site plan control, nor would these exemptions complement provincial goals of enhanced municipal decision-making authority and public participation in local land-use planning matters.

In a mature urban environment like Toronto, there exists a complex mix of land-uses and activities within close proximity to each other. Ensuring that both the natural and built environments are not adversely compromised and the cohesiveness of existing communities is maintained is a key goal of Council's new Official Plan. The location of energy facilities must, for example, consider the presence of adjacent natural features and impacts on them in addition to effects on adjacent communities and other land uses, urban design, access and setbacks. A land use evaluation through the provisions of the Planning Act gives municipalities and the

public the ability to evaluate potential land use impacts and identify potential measures to mitigate such effects on surrounding communities and other existing uses. (Please refer to Appendix 2 for a listing of municipal planning approval mechanisms for energy projects).

The current EA process for energy projects is poorly suited to identifying and addressing site-specific and local land-use effects of development. Accordingly it is recommended that the Province not exempt energy undertakings from the provisions of the Planning Act as currently proposed under Section 23 of Bill 51.

Bringing Together Provincial Energy and Land-Use Planning Policies

Ensuring proposed electrical generation projects are evaluated through a planning process such as site-plan or rezoning process would be in keeping with the province's stated desire to give municipalities more local control over development. It would also be in keeping with changes to the Provincial Policy Statement, which now requires greater weight be given to Council decisions and the enhanced site-plan and new conditional zoning powers under Bills 51 and 53. It would be reasonable and consistent with these new authorities that given the significant potential land-use impacts of new energy generating facilities the City should be able to evaluate those impacts through a site-plan evaluation and/or a rezoning application. To make the process as efficient and as streamlined as possible in order to support both the province's and City's goal of building sustainable energy producing facilities, the land-use planning process should occur in tandem with the environmental assessment process. It is recommended that the Minister of the Environment require that energy undertakings be subject to an evaluation under the City's site-plan control and zoning process and that this evaluation occur in tandem with the environmental assessment.

<u>Conclusions</u>:

Since 2003 the provincial government has undertaken a number of energy related initiatives to address the increasing demand for energy in a sustainable and environmentally responsible manner. These initiatives include the shut-down of all the province's coal-fired electrical stations, the expansion of existing infrastructure and the addition of new electrical capacity through the implementation of green technologies such as wind power. Related to these initiatives is the provincial emphasis on ensuring the Province's projected population and employment growth is directed to existing urban areas such as the GTA where infrastructure is currently available. To achieve these goals the province has been in the process of reviewing the legislative framework around energy undertakings including the EA Act and intends to grant municipalities more direct control over development through Bills 51 and 53 so that they may be able to accommodate growth in a manner best suited to their needs.

The current EA process is primarily focussed on identifying environmental impacts and potential mitigation measures. It is within this context that the suggestion to exempt energy undertakings from Planning Act provisions by way of Bill 51 appears to be contradictory to other policy directions taken by the Province.

In a mature urban environment such as Toronto, a complex mix of uses and activities occur within close proximity to each other. Ensuring a successful relationship between these uses, and individual buildings, structures and spaces becomes especially important. The EA process is not

an appropriate vehicle for the identification of such impacts and as such all energy undertakings, whether or not they are currently subject to the EA process, should be subject to the planning process.

The City of Toronto is supportive of the province's desire to bring sustainable and renewable energy production facilities on line as quickly as possible. However, land use and specific siting issues cannot be ignored as these may have a significant long term impact on the urban landscape. Failure to consider what these effects may be on the City of Toronto and its communities would not represent good planning.

Contact: *Barbara Leonhardt*
Director, Policy and Research
Phone: 416-392-8148,Fax: 416-392-3821
e-mail: bleonha@toronto.ca

List of Attachments:

Appendix 1: Electricity Project Classification Chart
Appendix 2: Municipal Planning Approval Mechanisms for Energy Projects

Appendix 1
Electricity Project Classification Chart

Electricity Project Type	*Category A: No EAA Requirements*[1]	*Category B*[2]*: Environmental Screening Process*[2]	*Category C: Individual EA*
Solar Photovoltaic	*All*	-	-
Any technology using an energy source not designated in the Regulation (e.g., fuel cells using hydrogen as fuel)	*All*	-	-
Emergency Generators	*All*	-	-

Transmission lines	- *<115 kV*
	- *≥ 115 kV and ≤ 2 km, unless associated with a Category B generation project*
		- *if associated with a Category B generation project and ≥ 115 kV, subject to Environmental Screening Process*
		- *if not associated with a Category B generation project and*
		  - *115 kV and > 2 km; or*
		  - *> 115 kV and < 500 kV and > 2 km and < 50 km,*
			- *> 115 kV and < 500 kV and ≥ 50 km*
			- *≥ 500 kV and > 2km*

Electricity Project Type	*Category A: No EAA Requirements*[1]	*Category B*[2]*: Environmental Screening Process*[2]	*Category C: Individual EA*
		subject to the Class EA for Minor Transmission Facilities	
Transformer Station	*< 115 kV*	- *if associated with a Category B generation project and ≥ 115 kV, subject to Environmental Screening Process* - *if not associated with a Category B generation project and* - *≥ 115 kV and ≤ 500 kV, subject to the Class EA for Minor Transmission Facilities*	*> 500 kV*
Wind turbines	*< 2 MN*	*≥ 2 MW*	-
Hydroelectric facilities	-	*<200 MW*	*≥ 200 MW*
Natural gas[4]	*<5 MW*	*≥ 5 MW*	-
Biomass (not including waste Material)[4]	*< 5 MW*	*≥ 5 MW*	-
Landfill Gas/Biogas	*< 23 MW*	*≥ 25 MW*	-
Waste Biomass (includes woodwaste)[4]	*< 10 MW*	*≥ 10 MW*	-
Cogeneration - natural gas, biomass and waste biomass facilities with an efficiency of > 60%	*< 25 MW*	*≥ 25 MW*	-
Generation for use on-site - natural gas, biomass, waste bionmass and on-site municipal waste facilities, where none of the electricity generated is being sold to the grid	*< 25 MW*	*≥ 25 MW*	-
Oil	*< 1 MW*	*1 to < 5 MW*	*≥ 5 MW*

Electricity Project Type	*Category A: No EAA Requirements*[1]	*Category B*[2]*: Environmental Screening Process*[2]	*Category C: Individual EA*
Coal	-	-	*All*
Municipal Solid Waste	-	- *for which an EPA s.30 hearing is not required (facilities incinerating less than 1500 persons domestic waste); or* - *that incinerates ≤ 100 tonnes/day municipal waste*	- *for which an EPA s.30 hearing would be required (facilities incinerating 1500 persons domestic waste or more); or* - *that incinerates > 100 tonnes/day municipal waste*
Liquid Industrial or Hazardous Waste	-	*sites incinerating only waste generated on-site*	*sites receiving and incinerating waste generated off-site*

1. *Anyone can request that the Minister of the Environment make a Category A project subject to the Environmental Assessment Act.*

2. *The Environmental Screening Process outlines a process by which members of the public and agencies with outstanding environmental concerns can request that a project in Category B be elevated to an individual EA (Category C).*

3. *Some transmission facilities listed under Category B in this chart are subject to review under the Class EA for Minor Transmission Facilities.*

4. *"Cogeneration" or "Generation for use on-site" exemptions also apply to some facilities using these fuels.*

Note: Taken from MOE's Guide to EA Requirements for Electricity Projects Overview.

Appendix 2
Municipal Planning Approval Mechanisms for Energy Projects

Official Plan Policies

Section 3.18 of the new Official Plan describes Council's commitment to implement the use of innovative energy producing options by encouraging the establishment and extension of district heating and cooling facilities, wind and solar power installations and other renewable energy systems. Energy efficient construction and design practises are also encouraged in this section.

Although there are no specific development criteria for the construction of these facilities any application would be evaluated for potential local impacts through the land use and other policies within the Plan along with any associated Secondary Plans and Site Specific Policies.

Given the emerging importance of meeting the increasing energy demands of the City as it grows over the next 30 years through the use of sustainable practises and green technologies, it may be appropriate to consider developing urban design guidelines for large and small scale energy undertakings.

Zoning

Currently, the City's zoning by-laws don't contain any comprehensive provisions to regulate energy projects, sustainable and green energy projects included. Energy projects are growing in type, scope and size. They can range from small wind turbines or solar electric (photovoltaic or PV) roof panels to large biomass power plants. Each has their own particular land use impact, and they should be regulated as such.

Conditional Zoning

Bills 51 and 53 allow for zoning with conditions provided a municipality has official plan policies in place respecting the use of this tool, and provided the conditions are for matters to be set out in provincial regulations. With Official Plan policies in place, subject to conditions prescribed by regulation, the City could enact by-laws requiring an owner of land to which the by-law applied, to meet certain conditions as part of a development. The legislation also provides for agreements which can be registered on title to secure the condition.

Requiring the use of alternative energy mechanisms (solar panels, wind turbines, photo cells) and energy efficiency standards, (district heating/cooling where available, percent above national energy standards), have been identified as conditions that could be considered as part of this zoning regime.

Subdivision Control

Council's commitment to energy efficient community design is enhanced under Bill 51, which has added additional criteria or which approval authorities must have regard in considering draft plans of subdivision, namely "the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy". This new criterion is intended to assist municipalities in implementing the provincial objectives of compact urban form and energy conservation and represents an additional tool with which to influence the efficient design of streets, blocks and buildings and the potential location of energy facilities.

Site Plan Control

Section 41 of the Planning Act grants the City the authority to include in its Official Plan areas, to be designated as "areas of Site Plan Control". With this authority the City may examine the design and technical aspects of proposed development to ensure it is attractive and compatible with the surrounding area and contributes to the economic, social and environmental vitality of the City. Features such as building designs, site access and servicing, waste storage, parking, loading and landscaping are reviewed.

The entire City is designated as a Site Plan Control area, but certain types of development are exempt from this process and there are site specific exemptions. For example in most residential areas, the construction of a new single-family house and most house additions are exempt. With respect to energy undertakings some types could be considered for exemption if they are small in scale (i.e.: solar paneling on a private dwelling) and for the personal use of the property owner. However for larger scale projects such as wind energy farms, it is desirable to undertake a site plan process to evaluate local impacts. Currently no criterion exists to determine which energy projects could be exempted.

Enhanced Site Plan Control Powers

The City's planning powers in regards to evaluating site and local impacts of development have been enhanced by the introduction of Bills 51 and 53. Through Section 114 of Bill 53 which deals with site plan control, the City will now be able to consider the exterior design of buildings, (other municipalities got similar powers through Bill 51), including character, scale, appearance and design features of buildings and their sustainable design. With this enhanced power the City would be better able to ensure new buildings incorporate energy efficient features as per its Official Plan policies and, in the case of building new energy generating stations, ensure the architectural details and design of the buildings complement and enhance the existing built environment.

Community Improvement Plans

Section 112 of Bill 53 grants Toronto enhanced Community Improvement Plan (CIP) powers (other municipalities were granted similar powers under Bill 51). Under Bill 53 municipal planning and financial capacity for encouraging and stimulating community improvement activities, which support intensification and the development of compact urban form, will be expanded to include new construction and not just renovation of existing buildings in CIP's and allow municipalities to include construction related to energy efficient uses of lands, buildings, structures and facilities (e.g. cogeneration, heat pumps, eco-friendly siting of buildings) within the costs of a Community Improvement Plan.