

Response to the Provincial Review of the Land Use Planning and Appeal System

Date:	December 2, 2013
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All Wards
Reference Number:	P:\2013\Cluster B\PLN\PGMC\PG13101

SUMMARY

On October 24, 2013, the Ministry of Municipal Affairs and Housing announced a review of the “Land Use Planning and Appeal System” (the Review) and the “Development Charges in Ontario”. To assist in this Review the Provincial Government issued two discussion papers, which accompanied this announcement. The purpose of the Review is to ensure that Ontario’s land use planning and appeal system is “predictable, transparent, cost-effective and responsive to the changing needs of communities.”

This report provides comments and recommendations for legislative change around those issues raised by the Province, which are of particular interest or concern for the City in its daily interface with the land use planning and appeal system. Comments specifically dealing with the *Development Charges Act* have not been included in this report. Council has already endorsed a number of requested improvements to the legislation and implementation principles during consideration of the 2013 Development Charges By-law, the Scarborough Subway and the Metrolinx funding tools. Comments are due back to the Province by January 10, 2014.

The Province has made it clear that this Review does not include: consideration of the elimination of the OMB; the OMB’s operations, practices and procedures; removing or restricting the Province’s approval role and ability to intervene in planning matters; removing municipal flexibility in addressing local priorities; changing the “growth pays for growth” principle of development charges; education development charges and the development charges appeal system; creating additional fees and/or taxes; and, substantive matters involving other legislation.

In the case of the City of Toronto, the key pieces of legislation related to the land use planning and appeal system includes both the *Planning Act* and the *City of Toronto Act, 2006*. The Province has indicated that it will consider minor housekeeping changes to other legislation, such as the *Ontario Building Code Act*, for example, which has an interface with the two above noted Acts.

RECOMMENDATIONS

The City Planning Division recommends that Council:

1. Endorse the recommendations from the Chief Planner and Executive Director, City Planning (Recommendations 1 through 19) contained in this report and shown in Attachment 1;
2. Forward this report to the Minister of Municipal Affairs and Housing before January 10, 2014;
3. Request that the City Manager ask Provincial Staff to consult further with City staff in the preparation of any legislative, regulatory or other changes associated with the Review, as per the Toronto-Ontario Cooperation and Consultation Agreement;
4. Request the Minister of Municipal Affairs and Housing to undertake a broader review of Ontario's land-use planning system to achieve improved accountability in addition to greater coordination of provincial initiatives, collaboration and transparency in Ontario's land use planning system;
5. Request the Province to expand the scope of the Review to include other related matters, including the operations, practices, procedures and reporting requirements of the Ontario Municipal Board; and
6. Request the Province to clarify and deem key policies and their implementation in municipal documents unappealable, particularly with respect to the Growth Plan and preclude the ability of entire municipal planning documents to be appealable.

Financial Impact

There are no direct financial implications arising from the recommendations in this report. If future legislative or other regulatory and procedural changes are enacted, stemming from the Review, they may have a financial impact on the City, and if so, will be reported on at that time.

DECISION HISTORY

This report responds to the Province's October 26, 2013 announcement of its review of the current land use planning and appeal process. Notwithstanding the current review,

City Council has been engaged over the years, in advocating for land use planning and appeal change, including:

- (a) Planning and Transportation Committee Report 2, Clause 4a, "City of Toronto Position Regarding Ontario Municipal Board Reform", adopted as amended by the Council of the City of Toronto at its Special meeting on April 15 and 16, 2004;
<http://www.toronto.ca/legdocs/2004/agendas/council/cc040415/pltcl004a.pdf>
- (b) Planning and Transportation Committee Report 5, Clause 14, "Provincial Planning Reform Initiatives: Consultation Papers on OMB Reform, *Planning Act* Reform and Implementation Tools and Provincial Policy Statement Draft Policies" adopted without amendment by Toronto City Council on July 20, 21 and 22, 2004; and
<http://www.toronto.ca/legdocs/2004/agendas/council/cc040720/plt5rpt/cl014.pdf>
- (c) Planning and Transportation Committee Report 2, Clause 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", Consolidated Clause in Planning and Transportation Committee Report 2, adopted as amended by City Council on May 23, 24 and 25, 2006.
<http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/cofa.pdf>

Development Charges in Ontario Consultation

Comments specifically dealing with the Province's review of the *Development Charges Act* do have not been included in this report. Council has already endorsed a number of improvements and changes to the *Development Charges Act* including the following:

- (a) At its meeting on October 8, 9, 10 and 11, 2013, City Council, during consideration of the new development charges by-law, requested the Province to:
 - “a. *remove or amend the historical service level restrictions on development charge rate calculations;*
 - b. *eliminate the statutory 10 percent reduction to eligible costs; and*
 - c. *eliminate exclusions of ineligible municipal services.*”

The above measures support the key development charges principle that "growth pays or growth" and improves the City's ability to recovery growth-related infrastructure costs from new development. EX34.1: "Development Charges By-law Review"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.1>

- (b) At its meeting on October 8, 9, 10 and 11, 2013, City Council, during consideration of a report from the City Manager on the Scarborough Rapid Transit Options, requested the Province to "make appropriate amendments to the Development Charges Act for the purposes of the McCowan Corridor Subway Project similar to those made by the Province for the Toronto York Spadina

Subway Extension project". CC39.5: "Scarborough Rapid Transit Options: Reporting on Council Terms and Conditions"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.5>

(c) At its meeting on May 7, 8, 9 and 10, 2013, during consideration of the report from the City Manager and Deputy City Manager and Chief Financial Officer respecting revenue options for Metrolinx Transportation Growth Funding City Council, among other things, requested Metrolinx and the Province of Ontario to adopt the following implementation principles to govern the use of any new GTHA taxes and fees (such as development charges):

"i. New taxes or user fees imposed in the GTHA should be assessed at the same rates across the GTHA

ii. New revenue tools must be applied equally and broadly across southern Ontario in a way that does not create a disincentive to economic growth in Toronto." EX31.3: "Metrolinx Transportation Growth Funding – Dedicated Revenues"

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX31.3>

ISSUE BACKGROUND

As part of the current review, the Provincial discussion paper on the land use planning system highlights four areas/themes of interest including:

- Achieving more predictability, transparency and accountability in the planning/appeal process and reducing costs;
- Supporting greater municipal leadership in resolving issues and making local land use planning decisions;
- Better engagement of citizens in the local planning process; and
- Protecting long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth.

Guiding principles include having a:

- Public able to participate, be engaged and have their input considered;
- System led by sound policies that provide clear provincial direction/rules and up-to-date municipal documents that reflect matters of both local and provincial importance and communities that are the primary implementers and decision-makers;
- Process that is predictable, cost-effective, simple, efficient and accessible, with timely decisions; and
- Transparent appeal system.

These themes are also applied to a discussion of the use of growth management tools in the *Planning Act* and in particular *Section 37* (increases in height/density in exchange for community benefits) and *Section 42* (parkland dedication).

The themes and principles have been previously raised by the Province and continue to have relevance today. While significant legislative changes took place with regard to Ontario's and Toronto's land use planning and appeal system in 2006, this current review affords the City a further opportunity to revisit matters that were not addressed in the last round of *Planning Act* reforms.

The comments provided below are based on a review of the questions (listed in Attachment 1 to this report) raised in the Provincial consultation papers, and incorporate the results of dialogue with Legal Services, Parks, Forestry and Recreation, and Financial Planning staff.

COMMENTS

The Ministry of Municipal Affairs and Housing has undertaken a scoped review of the land use planning and appeal system and related growth management tools. Comments are due to the Province by January 10, 2014. Further discussion will be accommodated by Provincial staff early in 2014 following receipt of the City's preliminary comments. The comments and recommendations identified in this report, centre on specific themes/issues of importance to the City. Attachment 1 of this report matches each of these themes/issues and the respective recommendations, to the questions raised in the Provincial consultation papers.

Coordinating and Merging of Key Provincial Policy Documents and Plans

Ontario's "policy led" planning system has become increasingly complex with the emergence of numerous, intricate and (at times) overlapping pieces of legislation, regulations and plans. Municipalities are challenged to coordinate and successfully implement Provincial policies and plans that are administered by various Ministries. To complicate matters, municipalities must take into consideration and put into practice plans and policies that:

- are reviewed and updated along different timelines; and
- provide competing implementation standards by having, in some instances, a definition for terms that vary amongst the provincial policy documents or where opaque language in the interpretation sections of these documents does not make it abundantly clear as to which definition prevails;

In the absence of provincial coordination municipalities risk developing policies or making decisions that make sustainable land use planning and the delivery of complete communities challenging to achieve.

Recommendation 1:

The Province create greater predictability and transparency in the land use planning and appeal process by:

- i. Aligning the review of the PPS and provincial plans and provide that they have consistent review timeframes of 5 years or extend the timeframe to an alternative time frame of either 7 or 10 years;
- ii. Ensuring the timely approval of foundational policy pieces such as the PPS, which can impact the scope of review for provincial plans;
- iii. Limiting appeals of official plan amendments intended to bring municipal official plans into conformity with provincial policy and plans; and
- iv. Providing clear interpretation sections within the policy documents and plans; and resolving conflicting provisions in plans which cover overlapping geography which each state that the plan's policies have precedence over another or "do not conflict with" the other.

Recognizing the Importance of Well Designed Buildings and Good Contextual Fit

The growing proliferation and prominence of tall buildings and high density development as an outcome of intensification in identified growth areas of the City, results in greater responsibilities and obligations regarding building design, contextual fit and assessments of impacts on the public realm. The Official Plan acknowledges these obligations. Guidelines for the design, evaluation and approval of tall, mid-rise and other buildings have been developed to aid in the review of development applications and to achieve appropriate built form transitions to adjacent areas. Achieving appropriate densities, building typologies and public realm improvements that support and strengthen particular neighbourhoods of the City is critical to maintaining the liveability and social and economic vitality of Toronto and other communities.

Further to the *City of Toronto Act* and amendments to the *Planning Act*, cities across Ontario may now consider the exterior design of buildings, including the character, scale, appearance and design features of buildings and their sustainable design as part of the site plan control approval process. Section 2.2.3(7) of the Growth Plan for the Greater Golden Horseshoe also makes mention of the need to provide high quality public open spaces with site design and urban design standards that create attractive and vibrant places generally achieve higher densities than the surrounding areas and achieve an appropriate transition of built form to adjacent areas. However, the list of provincial interests contained in the *Planning Act*, do not make explicit reference to the importance of well-designed buildings and contextual fit. This type of foundational language should be contained in the Act and form part of any dialogue around "complete communities".

Recommendation 2:

The Province recognize the importance of built form in the *Planning Act*, and revise the *Planning Act* by:

- i. amending Subsection 2(q) to recognize the importance of development that is designed to be sustainable, ‘well designed, in order to create high quality public open spaces with design standards that create high quality safe, accessible, attractive and vibrant places’ that support public transit and are oriented to pedestrians;
- ii. amending 16 (1)(a) to include the ‘built’ environment in addition to the natural environment.

Recognizing the Importance of Council Decisions

Municipally adopted and approved Official Plan policies and implementing by-laws should not be treated lightly where they set comprehensive and strategically determined municipal planning direction. Municipal councils have the benefit of ongoing engagement with the communities they represent, and extensive knowledge of local issues, opinions and needs on which they base their decisions. Furthermore, the decisions of municipal councils once approved, regarding the implementation of provincial policies and plans should be recognized and given the appropriate weight they deserve as the goals and community vision to control and direct how the City grows and develops. Accordingly the legislation governing the planning process and appeals to the Ontario Municipal Board should be amended to better reflect the importance of municipal decision-making on planning matters.

Amendments to the *Planning Act* introduced through Bill 51 recognized the municipalities’ role in local planning decisions that determine the future of communities based on the input of its residents, by introducing language to ensure approval authorities and the OMB “have regard” for municipal decisions.

The current *Planning Act* standard of “shall have regard to” is not strong enough to protect adopted and approved municipal interests. The Province has recognized in the preamble to the *City of Toronto Act*, the importance of providing the City with a legislative framework within which the City can build a strong, vibrant and sustainable city that is capable of thriving in the global economy and that “the City is a government that is capable of exercising its powers in a responsible and accountable fashion”. If this is true, then a standard for review should be provided to ensure that OMB decisions “shall be consistent with” municipal decisions rather than the current “shall have regard to” review standard.

The proposed change is intended to ensure that municipal policies are applied in all land use planning decisions, and that the outcomes of planning decisions uphold and advance municipal policies that have been adopted in a process where the public has been able to participate, be engaged and have their input considered.

Recommendation 3:

The Province amend the *Planning Act* to better recognize the importance of the decisions of council, by replacing the current “shall have regard to” review standard for municipal decisions to a “shall be consistent with” standard.

Removing the Right of Appeal to the OMB of Council Decisions that Refuse an Application to Amend a Municipally Initiated Official Plan Amendment and its Implementing By-law

Official plan amendments (OPAs) that establish a detailed area based land use and built form context to guide development/redevelopment policies (e.g. Secondary Plans, Precinct Plans) are prepared after extensive public engagement and input and built upon numerous detailed studies. These OPAs become the blueprint for how an area will grow over the coming decades, once they are approved by Council or they take effect following an appeal. The approval process focuses public input at the front-end of the process and any party that has participated in the planning process can appeal the amendment to the OMB. However, once these OPAs and their implementing zoning by-laws (if approved concurrently with the OPA) are adopted, they should be allowed sufficient time to be implemented and guide development/redevelopment without the ability for individuals to amend these documents shortly after they have taken effect.

Similar powers currently exist in the *Planning Act*. The Act enables Council to refuse privately initiated official plan and zoning by-law amendment proposals to convert employment lands to other uses, with no right of appeal to the OMB where the Official Plan contains conversion policies. Appeals are only possible at the time of a municipal comprehensive review, required by the *Planning Act* to take place every five years, which either confirms or amends policies dealing with employment lands.

Removing appeals for privately initiated amendments to these in effect OPAs for a period of 5 years provides the City with an appropriate amount of time to implement and evaluate the approved official plan policies. It is recognized that while some municipally initiated official plans are accompanied by comprehensive implementing zoning by-laws, others are not. Removing the right to appeal refusals of privately initiated zoning by-laws amendments should only be applied to by-laws that are adopted concurrently (be it by Council or the OMB) with the municipally initiated official plan amendment.

Recommendation 4:

The Province amend the *Planning Act* to restrict appeals regarding municipally initiated official plan amendments and the implementing amendments zoning by-law considered concurrently with the OPA.

Providing Specific and Detailed Planning Reasons for Notices of Appeal of Entire Official Plans and Zoning By-laws

The *Planning Act* provides for specific part(s) of an official plan or zoning by-law to be appealed but also provides for the appeal of an entire official plan or comprehensive zoning bylaw. It has been the City's experience that when entire plans or by-laws are appealed it is either out of an over abundance of caution on the appellants behalf, or because insufficient analysis has been conducted by the appellant to identify specific parts of the official plan that are of concern to the appellant. Alternatively it is used as a negotiating tactic by appellants. The appeal of entire plans and by-laws should not be permitted. Generic appeals result in delays in the land use planning process and the ability to make timely infrastructure decisions that support the economic well being of the City. In addition, generic appeals result in delays and increased costs at the OMB, as parties are commonly required to scope the reasons and issues relating to their appeals through a formal process that includes the preparation of detailed witness statements and other materials. If appellants are ultimately required to scope their appeals, it is reasonable to request that this be done at the front end of the appeal period when an appellant submits their notice of appeal.

Appellants should be required to provide further scoped and more detailed grounds for an appeal as part of the contents of their notice. This recommendation does not preclude appeals of the entire plan or by-law but does ensure that substantive reasons are provided that then allow all parties an opportunity to identify particular concerns, facilitate negotiation and potential resolution of disputed matters, and reduce costs.

Recommendation 5:

The Province revise the *Planning Act* to ensure that the contents of a notice of appeal is sufficient to enable the parties and the municipality to identify the specific relationship between the policies and the reasons for the appeal. For example, the notice of an appeal shall provide detailed, precise and specific reasons for the appeal.

Circumscribing the OMB Authority to Determine if New Evidence Could Have Materially Affected Council's Decision

Under the *Planning Act* Council's role is to make local planning decisions that will determine the future of communities based on the evidence and information put before it. The *Planning Act* also requires that municipal councils give the public as much information as possible when preparing its official plan and when considering official plan and zoning by-law amendments. Before it adopts a plan or amendment, council must hold at least one public meeting where the public can formally give their opinion based on the complete range of information and material that is available to the council and the public.

The City has been involved in OMB cases where significant new evidence has been introduced by appellants that council has not had an opportunity to adequately consider and which may have materially affected council's decision. The OMB has provided infrequent opportunities for council to reconsider its decision in light of the new information and to make written recommendations to the Board.

If the OMB's authority to make the determination to admit new evidence was limited to only such occasions when written direction is provided by a council or the Ministry, more predictability, transparency and accountability would be introduced into the planning/appeal process and result in reduced costs. It also supports the notion of greater municipal stewardship and leadership in resolving issues and making local land use planning decisions that reflect "good planning."

The *Planning Act* contains language to ensure that information and material needed to assess planning applications is provided in an up-front and complete manner. Despite these changes however, the OMB continues to have final authority to make a determination as to whether any new evidence presented at the hearing could have materially affected Council's decision.

Recommendation 6:

The Province amend the *Planning Act* by introducing language that would limit the OMB's authority to make the determination to admit new evidence without the written direction of council or the Ministry; or

Alternatively, OMB members could be provided with clearer guidelines, protocols and enhanced training with regard to making a determination on their own initiative or by motion of a party that the introduction of new material could have materially affected a council's decision.

Removing the Right of Appeal of Municipally Initiated Official Plan Amendments Enacted to bring Local Plans into Conformity with Provincial Plans and Consistency with Provincial Policies

The *Planning Act* establishes the Province's role in a policy-led planning system in which it has the authority to issue policy statements municipalities must be consistent with; prepare provincial plans municipalities must conform with; function as the approval authority for upper-tier and single-tier municipalities; and, direct a municipality to revise, "without undue delay", all or part of an official plan updated as part of a municipal comprehensive review and conformity exercise.

Following Council adoption of its official plan initiated as part of a conformity exercise, the Province, and only the Province, should have the ultimate authority to determine conformity. Accordingly, challenges relating to the municipal adoption of provincial policies should not be appealable to the Ontario Municipal Board. Municipalities must not be subject to on-going lengthy and costly legal challenges to justify the implementation of provincial policies. To assist municipalities it would be beneficial if

the province could identify and affirm the fundamental policies and directions contained in provincial policies and plans that once adopted by municipalities cannot be appealed.

This restriction on appeals should also extend to policies a municipality has adopted that are more restrictive or exceed minimum requirements, thresholds and targets established by the Province. Municipally adopted policies based upon good planning principles, after being given comprehensive consideration by local councils that have extensive knowledge of local issues and the desires and needs of the residents they represent, should be given their appropriate weight. If the Province believes that the policies are too restrictive, it can use the tools available to it to challenge or amend the policies.

In addition, the current provincial consultation document dealing with land use planning, identifies, in its review of OMB caseload, that a large number of appeals have been brought forward to the OMB based on lack of decisions of approval authorities in respect to updating of municipal policies to implement the Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement. If changes are not made to the *Planning Act* to deal with the ability to appeal municipal official plan conformity exercises, it is foreseeable that there will again be a large number of appeals arising from the next municipal conformity exercise as these relate to the above noted and other Provincial Plans.

Recommendation 7:

The Province identify the fundamental policies and directions contained in provincial policies and plans and include provisions in their implementing legislation and regulations which would permit the only Province to deem municipal conformity. If the municipality has adopted the policies and they are deemed to conform, the right to appeal those policies should be eliminated.

Achieving Greater Co-Operation and Public Involvement by Extending the Timeframes for Planning Application Reviews

Greater public involvement and co-operation can be achieved if a municipality is afforded adequate time to review and decide on an application. Cities such as Toronto are experiencing tremendous growth pressures. The City receives numerous complex applications for intensification and growth for which a wide range of matters must be evaluated as part of the City's complete application and development application approval process. Often even when the applicant has submitted all the necessary information, the time required by the City to review, comment upon, request updates and effectively consult with the public cannot be completed within in the legislated timeframes. Good planning, local autonomy, front-end consultation and collaboration with applicants and the public, is compromised if an appeal, based simply on timelines, takes the matter out of the hands of local council. This is the reason why during previous land use planning reviews initiated by the Province, the City requested that legislated timeframes be extended further than those timeframes ultimately approved by Provincial legislation. (<http://www.toronto.ca/legdocs/2002/minutes/committees/plt/plt020429.pdf>).

While it may be argued that extending timeframes simply encourages delays and deferrals in decision-making, the City has also heard from the public that longer timeframes gives them the necessary time to adequately consider applications and productively participate in the municipal review process.

There is undoubtedly a need to balance opportunities for proper municipal review of planning applications with the rights of the development industry and the economic impacts of longer timeframes. When a matter becomes subject to the OMB's scheduling and agenda, decisions can take longer, costs increase and the public may feel excluded.

Recommendation 8:

The Province extend application processing timeframes in the *Planning Act* before "failure to proceed" appeals can be made for applications, as follows:

- i. Official Plan amendments be increased from 180 days to 240 days;
- ii. Zoning by-law amendments be increased from 120 days to 180 days; and
- iii. Zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

Providing Greater Clarity and Transparency with Regard to Section 37

Section 37 of the *Planning Act* authorizes a municipality with approved Official Plan policies to pass zoning by-laws authorizing increases in the height or density of a development otherwise permitted by the Zoning By-law, in return for the provision by the owner of "such facilities, services, or other matters" as set out in the by-law.

The Province states in its consultation document that the application of Section 37 may be seen as ad hoc and departing from the adopted vision in a municipality's official plan. The City's Official Plan provides that increased height and density will be evaluated on the basis of all the policies in the Official Plan, including the Plan's strategic objectives, the development criteria for the respective designation area, and the built form, human and natural environment policies. The Official Plan also contains comprehensive policies regarding when Section 37 may be considered and typical community benefits that may be provided. Often in Secondary Plan areas, the applicable Official Plan policies are more specific regarding the type and level of community benefits. Specific community benefits secured in a development are the result of public consultation, discussion among those involved in the development review process including City Planning staff, the owner/developer, the local Councillor and other staff as necessary, and consideration of intensification issues in the area, the nature of the development application, and the strategic objectives and policies of the Official Plan. Other benefits not specifically listed in the Official Plan may also be secured, provided these have been identified through a Council approved assessment (such as a Community Improvement Plan or a community services and facilities study) and the City and the owner have agreed to such community benefits.

To further increase transparency City Council adopted Implementation Guidelines for Section 37 of the *Planning Act* and a Protocol for Negotiating Section 37 Community Benefits. The guidelines recognize that Section 37 community benefits are voluntary contributions and that an owner/developer should not expect inappropriately high density or height increases in return for community benefits.

Notwithstanding the City's Section 37 policies, guidelines and protocols, staff believe that there is an opportunity to increase transparency and accountability in the use of Section 37. Currently the City is reviewing the guidelines and protocols around the implementation of Section 37.

One potential approach to addressing transparency entails the ability to adopt policies allowing for a value-based formula, or quantum approach with respect to the use of Section 37. Without explicit authority in the *Planning Act* to apply such an approach, there remains concern that applying such an approach could be interpreted as constituting an illegal tax. The enactment of explicit provisions in the *Planning Act* to permit the municipalities to establish a value-based formula, or quantum approach to the use of Section 37 would increase transparency and address transparency issues raised that its use is ad hoc.

Of additional concern to the City is the inclusion of the discussion and questions relating to Section 37 and Section 42 within the provincial paper on Development Charges. The incorporation of those *Planning Act* sections raises a concern that there is a perception that these fees provide a similar purpose to development charges, and changes under one Act may be offset by changes to the other, or that incorporating some form of density bonusing and parkland dedication into the *Development Charges Act* is being considered. It is important that Section 37 is maintained independent from Development Charges, as it a necessary tool to secure adequate community services and facilities necessary to enhance the quality of life for area residents.

<http://www.toronto.ca/legdocs/2004/agendas/committees/pof/pof040224/it043.pdf>

Recommendation 9:

The Province:

- i. introduce new language under Section 37 of the Planning Act that enables municipalities to establish a value-based formula, or quantum approach for the use of Section 37.
- ii. maintain Section 37 as a separate tool in the Planning Act, in order to continue enabling the City to secure specific on-site or local community benefits for services that are not funded by the City's Development Charges By-law and Section 42 (provision of parkland) of the Planning Act.
- iii. not trade off changes to the Development Charges Act with changes to Section 37 of the Planning Act.

Ensuring Continued Support for the City's Parkland Dedication Process

Section 42 of the *Planning Act* enables a municipality to require, as a condition of development or redevelopment of land, a conveyance of land and/or cash-in-lieu of land for park or other public recreational purposes. The City's Official Plan and Municipal Code – Chapter 415 require a parkland dedication of 5% for residential and 2% for commercial and other uses. To improve parkland dedication in higher growth areas but maintain transparency in the process, policies have been adopted in the Official Plan and Municipal Code, to provide that if a proposed residential or mixed use development is located within a Parkland Acquisition Priority Area, then it is subject to an alternative parkland dedication of up to 0.4 hectares per 300 dwellings units provided that the parkland dedication does not exceed 5-20% of the net site area, depending on the size of the development. The City's Alternative Parkland Dedication Rate is below the maximum limit of 1 hectare per 300 dwelling units prescribed under Section 42.3 of the *Planning Act* and also sets caps on the parkland dedication which is based on the site area of the development; something that is not specifically set out under the *Planning Act*.

In addition, the City is committed to carrying out periodic reviews of the parkland dedication policies in the Official Plan and Municipal Code to ensure the parkland dedication policies are fair, transparent and effective in creating strong, liveable and healthy communities. On November 6, 2013, the City of Toronto published a staff report on the City of Toronto Parkland Dedication Reserve Funds This type of voluntary reporting promotes greater understanding and awareness of the parkland dedication policies and processes, and is valuable for ensuring transparency and accountability. Further advancement of these principles will be central to future policy reviews. (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.BU46.4>).

Staff are concerned that the Province has included Section 42 within the Province's paper on the *Development Charges Act*. The primary purpose of Section 42 of the *Planning Act* is to secure land through the development process to address parks and other public recreation purposes, and the Official Plan clearly sets out the provision that the dedication of land is preferred to payment of cash-in-lieu of parkland dedication. Whereas, the purpose of Development Charges is to ensure that municipal investments in capital infrastructure are achieved in order to maintain service levels, as population and employment increase over time.

The provisions in the *Planning Act* that enable municipalities to charge an alternative rate of parkland dedication are crucial to ensuring adequate parkland is provided for future and existing residents while responding to the municipality's own planning and development context. The *Planning Act* requires that alternative parkland provisions if to be used must be authorized by specific policies contained in an official plan. If appealed, those official plan policies must be justified before the Ontario Municipal Board, thereby requiring municipalities to create alternative parkland requirements to meet the specific requirements and circumstances of that municipality. The *Planning Act* allows flexibility for various approaches in applying parkland dedication provisions based on the needs and growth patterns of the municipality.

Recommendation 10:

The Province:

- i. make no substantive amendments to Section 42 of the Planning Act; but clarify that proceeds from the sale of lands purchased with cash-in-lieu of parkland dedication be treated in the same way as the proceeds from the sale of land dedication to the municipality under Section 42.
- ii. maintain Section 42 separate and independent from Development Charges, as it may reduce the City's power to require on-site parkland dedications.
- iii. not trade off changes to the *Development Charges Act* with changes to Section 42 of the Planning Act.

Recognizing and Eliminating Certain Abuses of the Committee of Adjustment Process

In discussions with City staff and councillors, there is concern that as a result of pressures for intensification and the desire of the development community to expedite approvals, property owners/developers have attempted to circumvent additional prescribed public meetings by requesting minor variances shortly after a significant rezoning. Currently a developer can obtain a rezoning for a development and can quickly turn around and make an application to the Committee of Adjustment (C of A) to vary the zoning by-law. In particular, the issue is most significant where an initial site-specific rezoning is passed permitting an increase in height and density (and an associated Section 37 agreement) and within a short period of time the applicant makes an application to the C of A requesting additional height and density contending that the request is technical in nature and necessary for the approved project to proceed.

Currently Section 45 of the Act authorizes Council to empower the C of A to hear minor variances and consent applications, however Council is not provided with the authority to prescribe any limitations or restrictions on an applicant to make, or the ability of the Committee to hear, defined variance applications. Staff recognizes the rights of an applicant to make an application, however there should be a prescribed period of time following a rezoning, during which variance applications cannot be made unless they are truly technical or housekeeping in nature. If municipalities could prevent minor variance applications for matters stemming out of newly approved site specific zoning by-laws for a three year period, or minor variances to height and density in areas of the city zoned for apartment neighbourhood or mixed-use, this could reduce the overall number of appeals to the OMB. (The provincial consultation paper on the land use planning and appeal system identifies that minor variance files represent the highest percentage of appeals under the *Planning Act*).

The City appreciates the difficulty in identifying matters that may be technical or housekeeping in nature, however by providing municipalities with the authority to introduce official plan policies that define what is technical or housekeeping in nature. The public would have an opportunity to consider, provide input and appeal the policies if they believed them to be overly restrictive. The Province, by providing the legislative authority to prevent certain minor variance applications, would provide the public and the development community with greater transparency, provide the residents with greater assurance that the development approved through the public rezoning process is what will be built and reduce costs for all parties decreasing the number of OMB appeals.

Recommendation 11:

The Province amend Section 45 of the *Planning Act* to permit a municipality to adopt official plan policies and enact by-laws that prescribe limitations or restrictions on an applicant to make, or the ability of the Committee to hear, defined variance applications for a period of 3 years after the enactment of a site specific by-law for said property unless the variance being requested is technical or housekeeping in nature.

Facilitating the Creation of Local Appeal Bodies

Planning and Growth Management Committee at its meeting on June 18, 2012 directed the establishment of a sub-committee to develop a structure, relationship framework and implementation plan for a Local Appeal Body to hear appeals of Committee of Adjustment decisions on minor variance and consent applications. The establishment of this sub-committee builds upon earlier steps taken by the City to realize the notion of establishing a local appeal body to hear appeals of planning applications.

During the last round of planning and OMB reform discussions in 2005, Council made it clear that they would have liked to see the abolition of the OMB. In the absence of this not being part of the 2005 review, Council's position was to request the Province to circumscribe the role of the OMB and not allow for hearings de novo and to give Council the right to establish a "local appeal body" to deal with appeals of C of A decisions, including minor variances, consents and also site plan and subdivision approval appeals. Reports have subsequently been received by Council, including reports dated April 12, 2006 and July 15, 2010 from the Chief Planner and Executive Director, which provide an overview of anticipated staffing and cost implications associated with setting up and operating a local appeal body for appeals of minor variances and consent applications. <http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/plt001a.pdf>

Although the Sub-committee for the Establishment of Local Appeal Body, has yet to report out on its conclusions, the main stumbling block for the City associated with establishing a local appeal body, is the desire to find a fair way to achieve full cost recovery of the local appeal body function through fees, rather than by way of property tax increases.

In 2010, the cost to the City of setting up and operating a local appeal body was in the range of just under two million dollars per annum. Fees, representing full cost recovery and based on the average number of appeals received per annum, were \$6,000 per application.

Section 69 (1) of the *Planning Act*, which would govern the tariff of fees for the local appeal body, clearly states that Council may establish a tariff of fees for the processing of applications made in respect of planning matters, which tariff is to be designed to only meet the anticipated cost of processing each type of application. This means that Council, in establishing its fee schedule, can't currently look at increasing Committee of Adjustment application fees, for instance, to subsidize the cost of local appeal body application fees.

Although Council is within its right to establish fees to cover the anticipated costs of operating a local appeal body, which are substantially higher than those which have been historically in place at the Ontario Municipal Board, these fees may pose issues of accessibility.

In assessing expectations with regard to a local appeal body application fee of over \$6,000, it can be argued that this appeal fee would likely encourage full hearings “de novo” to justify the cost to the applicant of the appeal, thus running contrary to the notion of circumscribing appeals of all planning applications, whether they be heard by the OMB or a local appeal body.

In choosing to proceed with establishing a local appeal body, a determination could be made vis-à-vis the merits of distinguishing, from a fees perspective, the different appeal application types as they relate back to the fee schedule categories for minor variance and consent applications. The fee schedule for appeal applications could contemplate, for instance, the reduction of fees for applications appealing decisions surrounding technical type consents or for minor variances dealing with additions and alterations to existing dwellings with three units or less, while raising appeal fees for "all other" minor variance categories such as appeals of residential uses over 3 units, and commercial, industrial or institutional uses. However, any form of graduated fees, in the absence of predictability surrounding the type of appeals filed, will always have a degree of uncertainty attached to them from the cost recovery perspective.

The Province should be requested to review issues of accessibility associated with having a local appeal fee structure in place. In addition, although the legislation permits the City to establish fees to cover the anticipated costs of operating a local appeal body, these fees cannot be combined with other planning fees, nor included into the calculation of minor variance and consent application fees, and fees can be appealed to the OMB and the OMB can ultimately rule on whether the fees are acceptable or not.

Recommendation 12:

- i. The Province acknowledges that in 2011/12, minor variances and consents made up 58 per cent of the OMB's planning application caseload. In 2011/12, 30% of the OMB's minor variance and consent caseload originated from Toronto. In taking over the function of setting up and operating a local appeal body, which will substantially lessen the OMB's caseload in this area, the City, in easing into its local appeal board role, be provided with ongoing funding and other means of support by the Province;
- ii. The general authority of the City under Section 145(3) (f) of the City of Toronto Act to change or dissolve a local board does not apply to the local appeal body enabled under Section 115 of the same Act. Extend this authority to include the local appeal body;
- iii. Amend the Planning Act and/or City of Toronto Act to not include the right to appeal local appeal body fees, based on the logic that enabling legislation has given authority for the local appeal body to hear appeals under specified provisions of the Planning Act and City of Toronto Act, providing the local appeal body with all the powers and duties of the OMB under the Acts;
- iv. Amend Section 69(1) of the Planning Act to permit the city to establish minor variance and consent application fees inclusive of the costs involved in operating a local appeal body for appeals of said minor variance and consent applications;
- v. Introduce mandatory mediation requirements as a first step in the local appeal body context through changes to Ontario Regulation 552/06 to streamline the appeal process, making the process more cost effective;
- vi. Limit the flow of minor variance applications stemming from approved site specific zoning by-laws by not permitting the filing of such applications within a three year period following by-law approval (Also see Recommendation 12); and
- vii. The notion of abolishing appeals of all or certain categories of minor variance and/or consent applications has merit and should also be given an opportunity for further discussion/decision-making as part of the current Provincial review of Ontario's land use planning and appeal process.

Expanding Powers of a Local Appeal Body

Council on February 6 and 7, 2012, adopted a report requesting the removal of Toronto from the jurisdiction of the Ontario Municipal Board and also asking the Province to abolish the OMB. Specifically, the following requests, among others, were made and forwarded via a March 19th, 2012 letter to the Province, on this matter:

- Abolish the OMB's jurisdiction over Zoning By-law Amendments, Official Plan Amendments, Site Plan, Subdivision and Condominium Plan approvals and Community Improvement Plans and appeals under the Heritage Act in the City of Toronto;
- Give other Ontario municipalities the option of removal from the OMB's purview;
- Re-structure the OMB to include a panel comprised of residents of Toronto which would have exclusive jurisdiction over all appeals arising from Toronto; and
- Initiate and support further Provincial and municipal public consultations on the matters (and others), noted above.

The 2012 letter from the City to the Province, follows a long history of requests, coming to the Province by way of direct Council motions and/or City staff reports examining the relationship between the City and the Ontario Municipal Board and the steps that need to be taken to move the City away from the Ontario Municipal Board's sphere of influence and towards increased local self-determination.

Based on the premise that the Province has stated that matters brought forward that relate to abolishing the OMB, would not be considered as part of this review, the following recommendation relating to expanding powers for a local appeal body, is being brought forward in this report.

Recommendation 13:

- i. Build on the notion of having a graduated approach to introducing further appeals of planning applications, commencing with appeals of minor variance and consent applications, site plan, plans of subdivision, and condominium approvals, and possibly site and area specific zoning by-laws, until such time as secure sources of finance for the local appeal body have been established (also refer to Recommendation 12);
- ii. Advocate for an even more circumscribed appeal process for those planning applications that continue being adjudicated by the Ontario Municipal Board, along with a re-structured OMB hearing protocol that would see a specific panel devoted to hearing appeals of Toronto planning application matters only (also refer to Recommendations 3, 4, 5, 6, & 7);
- iii. Support the implementation of a Development Permit System for Toronto which limits third party appeals of development permit by-law applications and prohibit site specific appeals within a five period time span of the by-law's approval; and
- iv. Provide the City with an opportunity to further consider restricting or limiting appeals of certain types or categories of planning applications, such as consents or certain types of minor variance applications

Providing Support to Municipalities to Implement the Development Permit System (DPS)

As part of this consultation the Province is looking for advice on what barriers and obstacles should be addressed to assist communities in implementing the DPS.

The Chief Planner and Executive Director, is reporting to the December 4th, 2013 meeting of Planning and Growth Management with respect to draft Official Plan Policies for Implementing a Development Permit System in the City. Based upon staff experience in the analysis of the contents of the implementing regulation and work required to prepare official plan policies, a number of challenges were encountered. Specifically, these challenges relate to the difficulty in interpreting the regulatory framework, converting the regulatory parameters into specific polices, as well as the amount of insight required to effectively interpret how the DPS system functions. From a staff perspective, the lack of technical advice and knowledge about this new development approval regulatory process has delayed the adoption of the development permit system.

While the Province has prepared: a Handbook for Municipal Implementation of the DPS; a DPS InfoSheet; a link to Frequently Asked Questions and Answers to the DPS; and a DPS Presentation, these materials only provide a high level overview of the DPS and explanation of the content of the Regulation. What appears to be missing is more technical guidance for municipalities and outreach at the local municipal level.

Recommendation 14:

The Province prepare model official plan policies, development permit by-laws and other technical and educational materials and seminars to better guide planners, municipal councils, and others who would like know how their communities could amend their official plans and advance the use of the DPS.

Mechanisms to Ensure the Provision of Inclusionary Housing

During previous reviews of Ontario's Planning System and Affordable Housing Policies, the City recommended the introduction of legislative authority to enable inclusionary housing.

The Federal/Provincial Affordable Housing Programs are a vital component in serving low and moderate-income households, but alone cannot satisfy the full range of housing needs. Inclusionary housing powers for affordable housing purposes assist municipalities in implementing the housing goals and objectives of the Provincial Policy Statement and Growth Plan, and in doing so, provide for a full range of housing needs. The mechanism has the added benefit of contributing to compact and transit-oriented development in keeping with the Growth Plan.

Recommendation 15:

It is recommended that the *Planning Act* be amended to introduce explicit authority to allow municipalities to enact inclusionary housing powers that are distinct from Section 37 powers.

Enacting By-laws Requiring Applicants to meet Certain Conditions as Part of the Development Approval Process

The *City of Toronto Act* (Sec 113(2)) provides for zoning with conditions, whereby the zoning may impose conditions on the use of land or erection or location of buildings. The Province must prescribe such conditions. However, the Province has not finalized any regulation to this effect. 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 would also provide for agreements that can be registered on title to secure the condition.

Additionally, at its meeting of October 2, 3 and 4, 2012, Council directed the Chief Planner and Executive Director to “Consider policies addressing requirements for mixing uses in Mixed Use Areas and Regeneration Areas, including mechanisms for implementing such requirements, such as the use of conditional zoning or holding by-laws”.

<http://www.toronto.ca/legdocs/mmis/2012/pg/bgrd/backgroundfile-49723.pdf>

In the past, where Employment Areas have been redesignated for a mix of residential and office uses to accommodate a mixed development, the office component, often intended as the buffer to the remaining employment area, had not been built. If the lands have been redesignated to Mixed Use Area, a subsequent rezoning application can be submitted for wholly residential development. If the office buffer remained designated as an Employment Area, it could only be converted during a Municipal Comprehensive Review. As part of the City's current Municipal Comprehensive Review, at least three conversion requests/applications received, propose to convert such approved office sites for residential purposes.

City Planning and Legal Services staff have investigated what tools might exist to ensure that when the City approves a development with a mix of office and residential uses, that what is approved is built. Aside from this type of matter being addressed in a Development Permit By-law, the only tool that could ensure the City's requirement for a true mix of uses, would be zoning with conditions as per Section 113 of the *City of Toronto Act*.

Recommendation 16:

The Province, in consultation with City Planning staff, finalize and enact a Regulation to permit the use of conditional zoning. Any regulation should not preclude Toronto from having conditions that deal with at least the following range of matters:

- environmental sustainability, energy efficiency, green technologies
- 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 securing new affordable ownership housing)
- community services and facilities; and
- requiring that the office portion of mixed-use development be built prior to residential development being allowed to proceed in those areas of the City where a mix of uses is required to fulfill Official Plan employment policies.

Section 42 of the Planning Act with respect to parkland conveyances

Section 42 of the *Planning Act* authorizes the municipality to require as a condition of development of land that land of a specified maximum quantum be conveyed to the municipality for park or other public recreational purposes. Section 42(6) of the *Planning Act* authorizes the municipality to require the payment of money to the value of the land rather than the conveyance (known commonly as "cash in lieu of parkland"). Payment of cash in lieu of parkland or arrangements "satisfactory to the council of a municipality for the payment of money" is included in the definition "other applicable law". However, "other applicable law" does not include a conveyance of parkland pursuant to Section 42. Given that cash in lieu of parkland is literally just a substitution for the conveyance, it would make sense for the conveyance to be treated in the same manner. "The conveyance of parkland or other arrangements satisfactory to the council of a municipality for the conveyance or parkland" should be included within the definition of "other applicable law". The alternative arrangements language recognizes that often the municipality in fact would rather take the land at a later stage in the development process. Nonetheless, this amendment would ensure that the arrangements for parkland have been finally determined prior to the issuance of a building permit.

Recommendation 17:

Section 51(25) (a) of the *Planning Act* authorizes a municipality to require a parkland conveyance as a condition of subdivision. Section 51.1 provides details in this regard and, like Section 42 of the *Planning Act*, also authorizes the payment of cash in lieu of parkland. Given that Section 42 with respect to payment of money in lieu of parkland dedication is included in the definition of applicable law, and for the same reasons set out above with respect to conveyances under Section 42 of the *Planning Act*, it follows that Sections 51(25)(a) and 51.1 of the *Planning Act* be included in the definition of "other applicable law".

Modernizing the Notice Provisions of the *Planning Act*

It would be beneficial to be able to provide notice in an electronic form.

There are many instances in the *Planning Act* that require the municipality to give notice. For instance, notice is required pending the consideration (be it by the C of A or Council) of a minor variance application, consent/subdivision applications, official plan amendment and zoning by-law amendment applications. In addition, after a decision has been made, the municipality is required to provide notice of the decision. Currently the provisions of the Act and its regulations provide stringent notice requirements, specifically with respect to the method of providing notice.

While the requirements vary somewhat from application to application, ultimately fulfillment of the notice requirements can be costly, and is not necessarily effective. Publishing notice in Toronto newspapers can be expensive. Mailings are not inexpensive. Further, address information is based on the Municipal Property Assessment Corporation's most recent data, which is not necessarily up to date. It is recognized that there is some leeway in the Act for alternative notice requirements. For instance, Sections 17(19.3) and 34(14.3) provide for alternative procedures respecting informing and obtaining the view of the public with respect to Official Plans and ZBLs, respectively. It is noted, however, that this only addresses the notice of application (not the notice of passage), and an official plan amendment that is required in order to set out alternate procedures in appealable. Moreover, alternative procedure provisions are absent from other sections of the Act that also include onerous notice provisions, including but not limited to minor variance and consent/subdivision applications.

Recommendation 18:

Amend the *Planning Act* to permit electronic notice as an acceptable method of notice in all circumstances where notice is required in order to provide better consistency, clarity and effectiveness.

Making Agreements Imposed as Condition of a Permit to Demolish or Convert Rental housing Binding on Future Owners

Section 111 of the *City of Toronto Act, 2006* authorizes the City to prohibit and regulate the demolition of residential properties, and their conversion to other purposes. Given that this Section empowers the City to prohibit demolition through a Section 111 by-law, for consistency, it should provide parallel authority to the Chief Building official to deny a demolition or building permit in circumstances where the City has not permitted demolition or conversion for residential rental properties. This would be achieved by including by-laws mad under Section 111 of the *City of Toronto Act* within the definition of 'other applicable law.

Recommendation 19:

That Section 111 of the *City of Toronto Act* be included in the Building Code's definition of 'other applicable law.' And Further that the Act be amended to make agreements entered into pursuant to Section 111 enforceable against the owner and any and all subsequent owners of the land.

CONCLUSION

Further to the parameters set by this latest provincial review of Ontario's land use planning and appeal system, 18 recommendations have been put forward for Council's consideration by City Planning, Legal Services and Parks, Forestry and Recreation staff. Many of the recommendations build upon the City's previous requests to the Province with respect to Planning and *City of Toronto Act* review and reform. No separate report concerning development charge policies is required as Council has already taken appropriate positions in this regard as reiterated in the Decision History section of this report.

The recommendations generally address the following matters:

- Better coordinating of key provincial policy documents and plans;
- Recognizing the importance of well designed buildings;
- Recognizing the importance of Council decisions;
- Removing the right of appeal to the OMB of Council decisions that refuse an application to amend a municipally initiated official plan amendment;
- Providing specific and detailed planning reasons for notices of appeal of entire official plans and zoning by-laws;
- Further circumscribing the OMB authority regarding the introduction of new evidence;
- Removing the right of appeal of municipally initiated official plan amendments and their implementing zoning by-laws;
- Extending the timeframes for planning application reviews;
- Providing greater clarity and transparency with regard to Section 37;
- Ensuring continued support for the City's parkland dedication process;
- Eliminating perceived misuse of the Committee of Adjustment process;
- Facilitating the creation of expanding powers of local appeal bodies;
- Providing for zoning with conditions and inclusionary housing;
- Expanding the definition of 'other applicable law'; and
- Modernizing the Notice Provisions of the *Planning Act*
- Recognizing and maintaining the distinct and necessary purposes of fees under Section 37, Section 42, and development charges

The City's response is due back to the Province for January 10th, 2014. This response will form the basis for further discussions with provincial staff around the City's recommendations.

CONTACT

Kerri A. Voumvakis, Director
Strategic Initiatives, Policy & Analysis
City Planning Division
Tel: 416-392-8148
Fax: 416-392-3821
Email: kvoumva@toronto.ca

Helen Bulat, Project Manager
Strategic Initiatives, Policy & Analysis
City Planning Division
Tel: 416-392-5848
Fax: 416-397-4080
Email: hbulat@toronto.ca

SIGNATURE

Jennifer Keesmaat, M.E.S, MCIP, RPP
Chief Planner & Executive Director
City Planning Division

ATTACHMENT

Attachment 1: Response to Provincial Discussion Questions with Respect to the Land Use Planning and Appeal System

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Attachment 1

Response to Provincial Discussion Questions with Respect to the Land Use Planning and Appeal System

Land Use Planning and Appeal System

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

Q1. How can communities keep planning documents, including official plans, zoning by-laws and development permit systems (if in place) more up-to-date?

Recommendation #1. Coordinating and Merging of Key Provincial Policy Documents and Plans.

The Province create greater predictability and transparency in the land use planning and appeal process by:

- i. Aligning the review of the PPS and provincial plans and provide that they have consistent review timeframes of 5 years or extend the timeframe to an alternative time frame of either 7 or 10 years;
- ii. Ensuring the timely approval of foundational policy pieces such as the PPS, which can impact the scope of review for provincial plans;
- iii. Limiting appeals of official plan amendments intended to bring municipal official plans into conformity with provincial policy and plans; and
- iv. Providing clear interpretation sections within the policy documents and plans; and resolving conflicting provisions in plans which cover overlapping geography which each state that the plan's policies have precedence over another or "do not conflict with" the other.

Recommendation #3. Recognizing the Importance of Council Decisions

The Province amend the Planning Act to better recognize the importance of the decisions of council, by replacing the current "shall have regard to" review standard for municipal decisions to a "shall be consistent with" standard.

Q2. Should the planning system provide incentives to encourage communities to keep their official plans and zoning by-laws up-to-date to be consistent with provincial policies and priorities, and conform/not conflict with provincial plans? If so, how?

Recommendation #7. Removing the Right of Appeal of Municipally Initiated Official Plan Amendments Enacted to bring Local Plans into Conformity with Provincial Plans and Consistency with Provincial Policies

The Province identify the fundamental policies and directions contained in provincial policies and plans and include provisions in their implementing legislation and regulations which would permit the only Province to deem municipal conformity. If the municipality has adopted the policies and they are deemed to conform, the right to appeal those policies should be eliminated.

- Q3. Is the frequency of changes or amendments to planning documents a problem? If yes, should amendments to planning documents only be allowed within specified timeframes? If so, what is reasonable?

Recommendation #4. Removing the Right of Appeal to the OMB of Council Decisions that Refuse an Application to Amend a Municipally Initiated Official Plan Amendment and its Implementing By-law

The Province amend the Planning Act to restrict appeals regarding municipally initiated official plan amendments and the implementing amendments zoning by-law if it was considered concurrently with the OPA.

Recommendation #11. Recognizing and Eliminating Certain Abuses of the Committee of Adjustment Process

The Province amend Section 45 of the Planning Act to permit a municipality to adopt official plan policies and enact by-laws that prescribe limitations or restrictions on an applicant to make, or the ability of the Committee to hear, defined variance applications for a period of 3 years after the enactment of a site specific by-law for said property unless the variance being requested is technical or housekeeping in nature.

- Q4. What barriers or obstacles may need to be addressed to promote more collaboration and information sharing between applicants, municipalities and the public?

Recommendation #6. Circumscribing the OMB Authority to Determine if New Evidence could have Materially Affected Council's

- i. The Province amend the *Planning Act* by introducing language that would limit the OMB's authority to make the determination to admit new evidence without the written direction of council or the Ministry; and
- ii. Alternatively, OMB members could be provided with clearer guidelines, protocols and enhanced training with regard to making a determination on their own initiative or by motion of a party that the introduction of new material could have materially affected a council's decision.

Recommendation #8. Achieving Greater Co-Operation and Public Involvement by Extending the Timeframes for Planning Application Reviews

The Province extend application processing timeframes in the *Planning Act* before “failure to proceed” appeals can be made for applications, as follows:

- i. Official Plan amendments be increased from 180 days to 240 days;
- ii. Zoning by-law amendments be increased from 120 days to 180 days; and
- iii. Zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

Recommendation #9. Providing Greater Clarity and Transparency with Regard to Section 37

The Province:

- i. introduce new language under Section 37 of the Planning Act that enables municipalities to establish a value-based formula, or quantum approach for the use of Section 37.
- ii. maintain Section 37 as a separate tool in the Planning Act, in order to continue enabling the City to secure specific on-site or local community benefits over and above those funded by the City's Development Charges By-law and Section 42 (provision of parkland) of the Planning Act.
- iii. not trade off changes to the Development Charges Act with changes to Section 37 of the Planning Act.

Q5. Should steps be taken to limit appeals of entire official plans and zoning by-laws? If so, what steps would be reasonable?

Recommendation #5. Providing Specific and Detailed Planning Reasons for Notices of Appeal of Entire Official Plans and Zoning By-laws

The Province revise the Planning Act to ensure that the contents of a notice of appeal is sufficient to enable the parties and the municipality to identify the specific relationship between the policies and the reasons for the appeal. For example, the notice of an appeal “shall provide detailed, precise and specific” reasons for the appeal.

Recommendation #7. Removing the Right of Appeal of Municipally Initiated Official Plan Amendments Enacted to bring Local Plans into Conformity with Provincial Plans and Consistency with Provincial Policies

The Province identify the fundamental policies and directions contained in provincial policies and plans and include provisions in their implementing legislation and regulations which would permit the only Province to deem municipal conformity. If the municipality has

adopted the policies and they are deemed to conform, the right to appeal those policies should be eliminated.

Q6. How can these kinds of additional appeals be addressed? Should there be a time limit on appeals resulting from a council not making a decision?

Recommendation #8. Extending the Timeframes for Planning Application Reviews

The Province extend application processing timeframes in the *Planning Act* before “failure to proceed” appeals can be made for applications, as follows:

- i. Official Plan amendments be increased from 180 days to 240 days;
- ii. Zoning by-law amendments be increased from 120 days to 180 days; and
- iii. Zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

Q7. Should there be additional consequences if no decision is made in the prescribed timeline?

No Recommendation

Q8. What barriers or obstacles need to be addressed for communities to implement the development permit system?

Recommendation #14. Providing Support to Municipalities to Implement the Development Permit System (DPS)

The Province prepare model official plan policies, development permit by-laws and other technical and educational materials and seminars to better guide planners, municipal councils, and others who would like know how their communities could amend their official plans and advance the use of the DPS.

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

Q9. How can better cooperation and collaboration be fostered between municipalities, community groups and property owners/developers to resolve land use planning tensions locally?

Recommendation #2. Recognizing the Importance of Well Designed Buildings and Good Contextual Fit

The Province recognize the importance of built form in the *Planning Act*, and revise the *Planning Act* by:

- i. amending Subsection 2(q) to recognize the importance of development that is designed to be sustainable, 'well designed, in order to create high quality public open spaces with design standards that create high quality safe, accessible, attractive and vibrant places' that support public transit and are oriented to pedestrians;
- ii. amending 16 (1)(a) to include the 'built' environment in addition to the natural environment.

Recommendation #3. Recognizing the Importance of Council Decisions

The Province amend the Planning Act to better recognize the importance of the decisions of council, by replacing the current "shall have regard to" review standard for municipal decisions to a "shall be consistent with" standard.

Recommendation #8. Extending the Timeframes for Planning Application Reviews

The Province extend application processing timeframes in the *Planning Act* before "failure to proceed" appeals can be made for applications, as follows:

- i. Official Plan amendments be increased from 180 days to 240 days;
- ii. Zoning by-law amendments be increased from 120 days to 180 days; and
- iii. Zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

Q10. What barriers or obstacles may need to be addressed to facilitate the creation of local appeal bodies?

Recommendation #12. Facilitating the Creation of Local Appeal Bodies

- i. The Province acknowledges that in 2011/12, minor variances and consents made up 58 per cent of the OMB's planning application caseload. In 2011/12, 30% of the OMB's minor variance and consent caseload originated from Toronto. In taking over the function of setting up and operating a local appeal body, which will substantially lessen the OMB's caseload in this area, the City, in easing into its local appeal board role, be provided with ongoing funding and other means of support by the Province;
- ii. The general authority of the City under Section 145(3) (f) of the *City of Toronto Act* to change or dissolve a local board does not apply to the local appeal body enabled under Section 115 of the same Act. Extend this authority to include the local appeal body;
- iii. Amend the *Planning Act* and/or *City of Toronto Act* to not include the right to appeal local appeal body fees, based on the logic that enabling legislation has given authority for the local appeal body to hear appeals under specified provisions of the

Planning Act and *City of Toronto Act*, providing the local appeal body with all the powers and duties of the OMB under the Acts;

- iv. Amend Section 69(1) of the *Planning Act* to permit the city to establish minor variance and consent application fees inclusive of the costs involved in operating a local appeal body for appeals of said minor variance and consent applications;
- v. Introduce mandatory mediation requirements as a first step in the local appeal body context through changes to Ontario Regulation 552/06 to streamline the appeal process, making the process more cost effective;
- vi. Limit the flow of minor variance applications stemming from approved site specific zoning by-laws by not permitting the filing of such applications within a three year period following by-law approval (Also see Recommendation 12); and
- vii. The notion of abolishing appeals of all or certain categories of minor variance and/or consent applications has merit and should also be given an opportunity for further discussion/decision-making as part of the current Provincial review of Ontario's land use planning and appeal process.

Q11. Should the powers of a local appeal body be expanded? If so, what should be included and under what conditions?

Recommendation #13. Expanding Powers of a Local Appeal Body

- i. Build on the notion of having a graduated approach to introducing further appeals of planning applications, commencing with appeals of minor variance and consent applications, site plan, plans of subdivision, and condominium approvals, and possibly site and area specific zoning by-laws, until such time as secure sources of finance for the local appeal body have been established;
- ii. Advocate for an even more circumscribed appeal process for those planning applications that continue being adjudicated by the Ontario Municipal Board, along with a re-structured OMB hearing protocol that would see a specific panel devoted to hearing appeals of Toronto planning application matters only;
- iii. Support the implementation of a Development Permit System for Toronto which limits third party appeals of development permit by-law applications and prohibit site specific appeals within a five period time span of the by-law's approval; and
- iv. Provide the City with an opportunity to further consider restricting or limiting appeals of certain types or categories of planning applications, such as consents or certain types of minor variance applications

Q12. Should pre-consultation be required before certain types of applications are submitted? Why or why not? If so, which ones?

No recommendation. The City believes that it has established policies and procedures in its Development Guidelines that advocate pre-application consultation on all development applications.

Q13. How can better coordination and cooperation between upper and lower-tier governments on planning matters be built into the system?

No recommendation.

Theme C: Better engage citizens in the local planning process

Q14. What barriers or obstacles may need to be addressed in order for citizens to be effectively engaged and be confident that their input has been considered (e.g. in community design exercises, at public meetings/open houses, through formal submissions)?

Recommendation #3. Recognizing the Importance of Council Decisions

The Province amend the Planning Act to better recognize the importance of the decisions of council, by replacing the current “shall have regard to” review standard for municipal decisions to a “shall be consistent with” standard.

Q15. Should communities be required to explain how citizen input was considered during the review of a planning/development proposal?

No recommendation. The City includes in all Planning Reports that go to Council an explanation of the citizen input (if any) that was heard during the review of a development proposal and how they have been addressed.

Theme D: Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions and support for job creation and economic growth

Q16. How can the land use planning system support infrastructure decisions and protect employment uses to attract/retain jobs and encourage economic growth?

Recommendation #1. Coordinating and Merging of Key Provincial Policy Documents and Plans.

The Province create greater predictability and transparency in the land use planning and appeal process by:

- i. Aligning the review of the PPS and provincial plans and provide that they have consistent review timeframes of 5 years or extend the timeframe to an alternative time frame of either 7 or 10 years;

- ii. Ensuring the timely approval of foundational policy pieces such as the PPS, which can impact the scope of review for provincial plans;
- iii. Limiting appeals of official plan amendments intended to bring municipal official plans into conformity with provincial policy and plans; and
- iv. Providing clear interpretation sections within the policy documents and plans; and resolving conflicting provisions in plans which cover overlapping geography which each state that the plan's policies have precedence over another or "do not conflict with" the other.

Recommendation #3. Recognizing the Importance of Council Decisions

The Province amend the Planning Act to better recognize the importance of the decisions of council, by replacing the current "shall have regard to" review standard for municipal decisions to a "shall be consistent with" standard.

Recommendation #4. Removing the Right of Appeal to the OMB of Council Decisions that Refuse an Application to Amend a Municipally Initiated Official Plan Amendment and its Implementing By-law

The Province amend the Planning Act to restrict appeals regarding municipally initiated official plan amendments and the implementing amendments zoning by-law if it was considered concurrently with the OPA.

Q17. How should appeals of official plans, zoning by-laws, or related amendments, supporting matters that are provincially-approved be addressed? For example, should the ability to appeal these types of official plans, zoning by-laws, or related amendments be removed? Why or why not?

Recommendation #7. Removing the Right of Appeal of Municipally Initiated Official Plan Amendments Enacted to bring Local Plans into Conformity with Provincial Plans and Consistency with Provincial Policies

The Province identify the fundamental policies and directions contained in provincial policies and plans and include provisions in their implementing legislation and regulations which would permit the only Province to deem municipal conformity. If the municipality has adopted the policies and they are deemed to conform, the right to appeal those policies should be eliminated.

Recommendation #4. Removing the Right of Appeal to the OMB of Council Decisions that Refuse an Application to Amend a Municipally Initiated Official Plan Amendment and its Implementing By-law

The Province amend the Planning Act to restrict appeals regarding municipally initiated official plan amendments and the implementing amendments zoning by-law if it was considered concurrently with the OPA.

Development Charges in Ontario

Section 37 (Density Bonusing) and Parkland Dedication Questions

Q10. How can Section 37 and parkland dedication processes be made more transparent and accountable?

Recommendation #9. Providing Greater Clarity and Transparency with Regard to Section 37

The Province:

- i. introduce new language under Section 37 of the Planning Act that enables municipalities to establish a value-based formula, or quantum approach for the use of Section 37.
- ii. maintain Section 37 as a separate tool in the Planning Act, in order to continue enabling the City to secure specific on-site or local community benefits over and above those funded by the City's Development Charges By-law and Section 42 (provision of parkland) of the Planning Act.
- iii. not trade off changes to the Development Charges Act with changes to Section 37 of the Planning Act.

Recommendation #10. Ensuring Continued Support for the City's Parkland Dedication Process

The Province:

- i. make no substantive amendments to Section 42 of the Planning Act; but clarify that proceeds from the sale of lands purchased with cash-in-lieu of parkland dedication be treated in the same way as the proceeds from the sale of land dedication to the municipality under Section 42.
- ii. maintain Section 42 separate and independent from Development Charges, as it may reduce the City's power to require on-site parkland dedications.
- iii. not trade off changes to the Development Charges Act with changes to Section 42 of the Planning Act.

Q11. How can these tools be used to support the goals and objectives of the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe?

Recommendation #16. Enacting By-laws Requiring Applicants to meet Certain Conditions as Part of the Development Approval Process

The Province, in consultation with City Planning staff, finalize and enact a Regulation to permit the use of conditional zoning. 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
- 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; and
- requiring that the office portion of mixed-use development be built prior to residential development being allowed to proceed in those areas of the City where a mix of uses is required to fulfill Official Plan employment policies.

Recommendation #15. Mechanisms to Ensure the Provision of Inclusionary Housing

It is recommended that the Planning Act be amended to introduce explicit authority to allow municipalities to enact inclusionary housing powers that are distinct from Section 37 powers.

Growth and Housing Affordability Questions

Q15. How can the impacts of development charges on housing affordability be mitigated in the future?

Recommendation #15. Mechanisms to Ensure the Provision of Inclusionary Housing

It is recommended that the Planning Act be amended to introduce explicit authority to allow municipalities to enact inclusionary housing powers that are distinct from Section 37 powers.

Recommendation #19

That Section 111 of the City of Toronto Act be amended be included in the Building Code's definition of 'other applicable law'. And that the Act be further amended to make agreements entered pursuant to Section 111 enforceable against the owner and any and all subsequent owners of the land.

Additional Proposed Technical Amendments to Provincial Legislation

Recommendation #17: Section 51(25) (a) and Section 51.1 of the Planning Act with respect to parkland dedication in the subdivision context

Section 51(25) (a) of the *Planning Act* authorizes a municipality to require a parkland conveyance as a condition of subdivision. Section 51.1 provides details in this regard and, like Section 42 of the *Planning Act*, also authorizes the payment of cash in lieu of parkland. Given that Section 42 with respect to payment of money in lieu of parkland dedication is included in the definition of applicable law, and for the same reasons set out above with respect to conveyances under Section 42 of the *Planning Act*, it follows that Sections 51(25)(a) and 51.1 of the *Planning Act* be included in the definition of “other applicable law”.

Recommendation #18: Modernizing the Notice

Amend the *Planning Act* to permit electronic notice as an acceptable method of notice in all circumstances where notice is required. This would provide better consistency, clarity and effectiveness. It would also provide finality respecting the ability for municipalities to provide notice electronically rather than exposing such an alternative method to the possibility of appeal.