



## STAFF REPORT ACTION REQUIRED

### ***Planning Act - Proposed Amendments Introduced Through Bill 73, Smart Growth for Our Communities Act, 2015***

<b>Date:</b>	April 30, 2015
<b>To:</b>	Planning and Growth Management Committee
<b>From:</b>	Chief Planner & Executive Director, City Planning Division
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2015\ClusterB\PLN\PGMC\PG15064

#### **SUMMARY**

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This report provides a summary of the proposed amendments to the *Planning Act*, introduced through Bill 73, *Smart Growth for Our Communities Act, 2015*. The report also comments on the impact of these amendments on the City's planning approvals process and provides recommendations for Council's consideration with respect to these amendments.

Bill 73 highlights include:

- extending the review of new municipal official plans to ten years;
- preventing appeals to new official plans and comprehensive zoning-bylaws for two years by not permitting amendments to be filed unless initiated by the municipality;
- barring global appeals of Council's entire decision to adopt all of a new official plan and appeals of any part of an official plan that identifies forecasted population and employment growth as set out in a growth plan for the Greater Golden Horseshoe, approved under the *Places to Grow Act, 2005*;
- where an appellant argues that Council's decision to adopt an official plan is inconsistent with a policy statement, or fails to conform with or conflicts with a provincial plan, requiring the notice of appeal to explain how the decision is inconsistent or lacks conformity, as the case may be;
- making the development charges, section 37 density bonusing and parkland dedication systems more predictable, transparent and accountable;
- codifying citizen involvement in the land use planning approvals process;
- providing an option to municipalities to have an additional 90 days to resolve issues involving official plans and official plan amendments;
- providing municipalities with an additional 60 days to engage in alternative dispute resolution to resolve appeals prior to forwarding matters to the Ontario Municipal Board;

- preventing applications for a minor variance for a two year period following the passing of any zoning by-law that has been amended in response to an application, unless Council passes a resolution permitting the minor variance to proceed; and
- allowing the Lieutenant Governor in Council to issue regulations prohibiting applications to amend official plan policies regarding a development permit system, for a period of five years and applications to amend a development permit by-law for a period of five years.

In addition to the proposed amendments noted above, the Province is establishing a stakeholder working group to provide further advice on what constitutes a minor variance and regulation standards for notices and may also be asking this group to provide recommendations on additional areas of interest identified during these consultations.

Bill 73 embodies some positive changes to the *Planning Act*. A number of the proposed amendments are intended to ensure that Council approved policies are better protected and citizen engagement in planning matters is better recognized as part of the statutory decision making process. In the end however, many of these well-intentioned amendments will have limited applicability for the City. Accordingly, Staff are of the opinion that the Province should also consider, where appropriate, "made-for-Toronto" versions of the amendments that recognize the complexity and maturity of the City and its unique development pressures.

It is also important to note that Bill 73 does not address matters related to Ontario Municipal Board reform. It is Staff's understanding that the Province will be addressing this matter through a separate review to be undertaken later in the year. Once initiated, Staff will provide input into this review and report to Council on review outcomes accordingly.

On a separate but related note, amendments to the *Development Charges Act*, which were also included in Bill 73, formed the subject of a separate report by the City Manager and the Deputy City Manager and Chief Financial Officer, and were considered by the Executive Committee on April 22, 2015.

## **RECOMMENDATIONS**

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### **The Chief Planner and Executive Director, City Planning recommends that:**

1. City Council support in principle the provisions in Bill 73 to prohibit global appeals of Council's entire decision to adopt all of a new official plan but advise the Minister of Municipal Affairs and Housing that as drafted this has no immediate relevance for the City.
2. City Council request the Minister of Municipal Affairs and Housing to broaden the no global appeal provisions in Bill 73 to capture those instances where a new

Official Plan is being prepared through thematic policy reviews or where Council has adopted a Secondary Plan.

3. City Council express its support to the Minister of Municipal Affairs and Housing for the Bill 73 proposed amendment requiring an appellant to include in their notice of appeal, an explanation of how Council's decision to adopt an official plan is inconsistent with a policy statement, or fails to conform with or conflicts with a provincial plan.
4. City Council request the Minister of Municipal Affairs and Housing to broaden the removal provisions in Bill 73 of the right to appeal not just population targets and boundaries but any official plan amendments specifically intended to bring municipal official plans into conformity with provincial policy and plans, for which the Province has issued a decision of approval.
5. City Council request the Minister of Municipal Affairs and Housing to amend the official plan review period in Bill 73 for all official plans (existing and new) to 10 years, commencing from the date that the official plan policies identified and adopted by Council as forming part of the statutory review, come into effect.
6. City Council request the Minister of Municipal Affairs and Housing to amend Bill 73 to include a freeze on all privately initiated amendments to newly approved official plan policies stemming from comprehensive statutory and non-statutory municipal reviews of existing official plans and any concurrent implementing zoning by-laws, for a 2-year period.
7. City Council request the Minister of Municipal Affairs and Housing to amend Bill 73 to remove the right of appeal to the OMB of Council decisions that refuse a privately initiated official plan amendment application and its concurrent implementing zoning by-law for a 3-year period after the end of the 2-year freeze requested in Recommendation 6 above.
8. City Council express its strong support to the Minister of Municipal Affairs and Housing for removing the mandatory five-year review period of employment lands in Bill 73.
9. City Council express its support of Bill 73's proposed change to the *Planning Act* for the limitation on minor variances from the provisions of any zoning by-law amendment prior to the second anniversary of the day on which the by-law was amended, unless Council has declared by resolution that the application for the minor variance is permitted and with a request to the Minister of Municipal Affairs and Housing to further amend Bill 73 to expand the freeze period from the second to the third anniversary date on which the by-law was amended.
10. City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 amendments to provide more public accountability and

- transparency with regard to Section 37 community benefit contributions and expenditures.
11. City Council affirm its December 16, 2013 recommendation to the Minister of Municipal Affairs and Housing to 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.
  12. City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 amendments which require a municipality in adopting official plan policies allowing it to pass by-laws under subsection 42(3) of the *Planning Act* to establish alternative requirements for parkland dedications and payment-in-lieu of parkland, to have a parks plan in place that examines the need for parkland in the municipality and is made available to the public.
  13. City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 proposing to prohibit amendments to development permit system initiated official plan policies and related development permit by-laws for 5 years.
  14. City Council express its support for the Minister of Municipal Affairs and Housing's initiative to introduce a provincial regulation that provides prescribed criteria to which a minor variance must conform.
  15. City Council request the Minister of Municipal Affairs and Housing to exempt the City of Toronto from proposed section 8(4) of Bill 73, dealing with the establishment of mandatory planning advisory committees and instead allow the City to establish its planning advisory committee(s) through section 136 of the *City of Toronto Act, 2006*.
  16. City Council express its support with regard to Bill 73 making it mandatory for all municipalities to provide policies, appropriate for the given municipality, regarding procedures for informing and obtaining the views of the public in the Official Plan.
  17. City Council express its support with regard to Bill 73 providing legislative authority to make official plan policies regarding procedures for permitting alternative notice measures for informing the public, for a wider number of planning application types.
  18. City Council request the Minister of Municipal Affairs and Housing to further amend Bill 73 to permit the introduction of alternative notice official plan policies for the notice of decision (regarding both adoptions and refusals) of official plans, official plan amendments, zoning by-laws, plans of subdivision, consents and minor variances.
  19. City Council request the Minister of Municipal Affairs and Housing to further amend Bill 73 and Ontario Regulation 608/06 (Development Permits) to provide the

- legislative authority to make official plan policies regarding procedures for permitting alternative notice measures for informing the public of development permit system by-laws, permit applications, and notice of decisions.
20. City Council request the Minister of Municipal Affairs and Housing to meet with appropriate City representatives in order to continue a dialogue on options the City has vis-a-vis Bill 73 proposed amendments requiring Council to explain the effect of written and oral submissions on their decisions, in light of the City's governance and decision-making process with regard to planning applications and with regard to the number and volume of planning applications subject to this proposed amendment.
  21. City Council request the Minister of Municipal Affairs and Housing to exempt the City from amendments proposed for subsections 17(23.1) and (35.1), 22 (6.7), 34 (10.10) and (18.10), 45 (8.1), 51 (38), 53 (18) of the *Planning Act* to explain the effect of written and oral submissions on Council's decisions and undertake a consultation process with the City for a made-in-Toronto alternative, which embodies the intent of Bill 73 around this matter but better responds from an implementation standpoint, to the City's planning decision-making structure.
  22. City Council express its support to the Minister of Municipal Affairs and Housing of the 90-day voluntary time-out period before official plan, official plan amendment, and zoning by-law appeals proceed to the OMB, and request the Minister to also consider applying this 90-day time-out period within the context of extended timelines for "failure to proceed" appeals as per Recommendations 23 and 24 below.
  23. City Council request the Minister of Municipal Affairs and Housing to extend planning application processing timeframes in the *Planning Act* before municipal "failure to proceed" appeals can be made for official plans and all official plan amendment applications (municipally and privately initiated) from 180 to 240 days.
  24. City Council request the Minister of Municipal Affairs and Housing to extend planning application processing timeframes in the *Planning Act* before municipal "failure to proceed" appeals can be made for zoning by-laws that run concurrently with official plan amendments from 180 days to 240 days and zoning by-laws from 120 to 180 days.
  25. City Council support the proposed revision to the *Planning Act* for a time-out period before the 15-day appeal period kicks in, but requests the Minister of Municipal Affairs and Housing to further amend Bill 73 to extend the period required for alternative dispute resolution after an appeal has been made from 60 to 90 days.
  26. City Council request the Minister of Municipal Affairs and Housing to confirm that the costs of mediation and alternative dispute resolution borne by municipalities in the event of this proposed amendment to the *Planning Act* being enacted, can be

- incorporated into the City's planning application fees structure as per Section 69 (1) of the *Planning Act*.
27. City Council bring to the attention of the Minister of Municipal Affairs and Housing that a number of recommendations relating to *Planning Act* reform, as summarized in Attachment 1 of this report, and as adopted by Council on Dec 16, 2013, have not been addressed in Bill 73, but continue to be important for the City as part of any legislative efforts currently being taken to improve the land use planning and appeals process in Ontario and that an opportunity still exists to incorporate these recommendations into the current review of the *Planning Act*.
  28. City Council state its support to the Minister of Municipal Affairs and Housing for the upcoming Provincial review of the operations, practices, procedures and reporting requirements of the Ontario Municipal Board, including but not limited to the range of matters that can be appealed to the Board, as per the Ontario Premier's letter dated September 25, 2014 to the Minister of Municipal Affairs and Housing.
  29. City Council forward this report to the Minister of Municipal Affairs and Housing for the Ministry's June 3, 2015 commenting deadline and submit the report for posting on the Provincial Environmental Bill of Registry (EBR).

## **Financial Impact**

There are no financial impacts arising from this report. Enactment of amendments to the *Planning Act* identified in Bill 73 may result in administrative and other cost savings for the City in some cases and increased costs in others. Staff will report further on such impacts upon Bill 73 coming into effect.

## **DECISION HISTORY**

On October 24, 2013, the Ministry of Municipal Affairs and Housing launched a review of the land use planning and appeal system in Ontario along with a review of the development charges system, Section 37 (community benefits) and Section 42 (parkland dedication) of the *Planning Act*. The review encompassed two Acts, the *Planning Act* and the *Development Charges Act*.

In response to this review, the City Planning Division submitted a report for Council's consideration <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.16> which provided recommendations for legislative change around the issues raised by the Province. The report was adopted by Council on December 16, 2013 and submitted to the Minister of Municipal Affairs and Housing. Recommendations adopted on Dec 16, 2013 that have particular relevance within the context of the City's review of Bill 73, are listed in Attachment 1 to this report and include the following thematic areas: recognizing the importance of Council decisions; recognizing the importance of well-designed buildings and good contextual fit; diminishing the OMB's sphere of influence over municipal decision-making; and mechanisms to ensure the provision of inclusionary housing.

Recommendations relating specifically to OMB reform, do not form part of this Attachment but will be brought forward by staff as part of the City's response to the Province's future OMB reform initiative.

The Chief Planner and Executive Director, City Planning also submitted a letter dated April 16, 2014 to the Minister, providing additional comments with regard to issues touched upon by the Provincial review.

On March 5, 2015, the Minister of Municipal Affairs of Housing introduced Bill 73, *The Smart Growth for Our Communities Act, 2015* a bill that amends the *Planning Act* and the *Development Charges Act*. Bill 73 has received second reading, The City's commenting deadline to the Minister of Municipal Affairs and Housing with regard to this Bill is June 3, 2015.

## **ISSUE BACKGROUND**

City Planning staff led a detailed review of the changes to the *Planning Act* proposed by Bill 73 and the impact those changes may have on the City's planning and development approval process, practices and procedures. The review was undertaken in consultation with staff from Legal Services, the City Clerk's Office, Parks, Forestry and Recreation and the City Manager's Office. The Province will be reviewing recommendations and comments received and will be meeting with staff, prior to making further amendments to the Bill, following which, it is anticipated that the Province will move towards finalizing and giving Royal Assent to the *Smart Growth for Our Communities Act, 2015*.

## **COMMENTS**

Amendments proposed by Bill 73 are best understood by adopting a Province wide lens, where one size is intended to fit all municipalities. While Staff appreciates the challenges of crafting legislation to fit municipalities across the Province, Staff has also concluded that while the principles driving many of the proposed amendments are well intentioned, some amendments may be problematic for the City to implement. In some instances, some amendments could result in the slowing down of an already complex planning approval process, others may have significant cost implications, while still others, proposed to reduce the appeals to the OMB of municipally recently approved planning documents, will have no practical applicability to the City in the foreseeable future. Consideration should therefore be given to certain proposed amendments to the *Planning Act* introduced through Bill 73, being addressed as part of the upcoming review of the *City of Toronto Act, 2006* (COTA).

As previously mentioned, Bill 73 amendments to the *Planning Act* are not intended to address matters relating to the scope and effectiveness of the Ontario Municipal Board. Premier Wynne announced on September 25, 2014, that the Ministry of Municipal Affairs and Housing will be leading a further review of the OMB in order to improve its role within the broader land use planning system and Bill 73 has been evaluated within this context.

## **Bill 73 – Overview of Key Proposed Changes to the *Planning Act***

### **1. Limiting Global Appeals of New Official Plans**

#### **Comments:**

Bill 73 introduces provisions that would limit "global appeals" of a *new* Official Plan in respect of the decision of the approval authority. The term "global appeal" means that in the case of a new official plan, there can be no appeal in respect of "all of the decision of Council to adopt the entire plan". Appeals relating to a part of the decision or a part of the new plan are not prevented. The intent is to ensure that substantive reasons are provided that then allows all parties an opportunity to identify particular concerns, facilitate negotiation and resolution of disputed matters and potentially reduce OMB hearings related costs. The proposed amendment, intended to scope appeals to the official plan, would only apply to the City, if Council were to adopt a new official plan on a go forward basis, related to the timing of the enactment of Bill 73 and its final transition policies.

#### **Impact:**

This proposed Bill 73 amendment has no immediate relevance for the City.

#### **Recommendations:**

- City Council support in principle the provisions in Bill 73 to prohibit global appeals of a Council's entire decision to adopt all of a new official plan but advise the Minister of Municipal Affairs and Housing that this has no immediate relevance for the City. (Recommendation 1).
- City Council request the Minister of Municipal Affairs and Housing to widen the no global appeal provisions in Bill 73 to capture those instances where a new Official Plan is being prepared or amended through thematic policy reviews or where Council has adopted a Secondary Plan. (Recommendation 2).

### **2. Limiting Appeals of Policies Consistent with Provincial Policy Statements & Provincial Plans & Expanding Notice of Appeal Requirements to Explain Reasons for Appeal**

#### **Comments:**

Bill 73 limits certain types of appeals of approved official plan policies which are consistent with Provincial policy statements and provincial plans and expands notice of appeal requirements to now include an explanation of how Council decisions dealing with conformity exercises relating to Provincial policy statements and plans, are inconsistent with, fail to conform or conflict with those policies or plans.



Notwithstanding the general prohibition on global appeals, Bill 73 provides that appeals are permitted with respect to a part of a decision or part of a plan provided they do not intend to dispute that certain lands should or should not be within the boundary of a provincial plan or provincially approved policies such as those which identify forecasted population and employment growth under the *Places to Grow Act, 2005*. Where an appellant intends to contend that Council's decision to adopt an official plan is inconsistent with a policy statement, or fails to conform with or conflicts with a provincial plan, the notice of appeal must explain how the decision is inconsistent or lacks conformity, as the case may be. A similar requirement exists with respect to appeals of a council decision to pass a zoning by-law amendment. The failure to include the required explanation in the notice of appeal constitutes grounds for dismissal of the appeal without a hearing.

Bill 73 provisions provide that there are no appeals permitted with respect to any part of the City's Official Plan that identifies an area as being within the boundary of a vulnerable area as defined in the *Clean Water Act, 2006*; the Greenbelt Area or Protected Countryside as defined in the *Greenbelt Act, 2005* and any City policies that incorporate the Ministry's identified forecasted population and employment growth as set out in a Growth Plan under the *Places to Grow Act, 2005*.

Notwithstanding that no appeals can be brought with respect to Official Plan amendments to implement a boundary of a provincial plan or provincially forecasted population and employment growth policies, the associated policies relating to how Council chooses to allocate its population and employment growth targets in its Official Plan, for example, will continue to be appealable. The City will still be required to defend any related implementation policies should they be appealed.

**Impact:**

It is staff's opinion that only the Province should have the authority to determine conformity. The City and other municipalities should not be subject to on-going lengthy and costly legal challenges to justify the implementation of mandated Provincial policies.

Notwithstanding that notice of appeal requirements are proposed to be expanded in Bill 73 to explain how Council decisions dealing with conformity exercises relating to Provincial policy statements and plans are inconsistent with, fail to conform or conflict with those policies or plans, the City and the applicant continue to be permitted to make legal arguments as to the validity of the notice. The onus will still be on the OMB to determine the validity of the appeal.

Bill 73 amendments with regard to notice do not represent a significant change from current practice other than a higher standard and onus being placed on the appellant to scope their appeals. From a notice standpoint, the amendments have the added benefit that the City's legal staff will be able to better prepare for appeals of this nature given that they may be provided with the grounds and agreements upon which the appeals are based. The proposed amendment will assist in ensuring 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.

## **Recommendations:**

- City Council express its support to the Minister of Municipal Affairs and Housing for this proposed Bill 73 amendment to the *Planning Act* that would require an appellant to include in their notice of appeal, an explanation of how Council's decision to adopt an official plan is inconsistent with a policy statement, or fails to conform with or conflicts with a provincial plan. (Recommendation 3).
- City Council request the Minister of Municipal Affairs and Housing to broaden the provisions in Bill 73 with respect to the removal of the right to appeal not just population targets and boundaries but any official plan amendments specifically intended to bring municipal official plans into conformity with provincial policy and plans, for which the Province has issued a decision of approval. (Recommendation 4).

### **3. Improving Outcomes of Official Plan Reviews & Providing Greater Weight to Newly Approved Official Plan Policies**

#### **Introduction:**

Bill 73 proposes that mandatory updates for "new official plans" will be required every 10 years and existing official plan updates will still be required every 5 years. The Bill also introduces a new provision that no privately initiated amendments to a new official plan will be permitted for two years:

Currently subsection 26(1) of the *Planning Act* requires a municipality to revise its official plan at 5-year intervals, to ensure that it aligns with provincial plans and policy statements and has regard to matters of provincial interest. Bill 73 revises the scheduled review to require revision 10 years after a new official plan comes into effect and at 5-year intervals thereafter. The determination as to what constitutes a new official plan for the purposes of this Bill may be determined in a future transition regulation. However, it appears that "new" would refer to an entirely revised official plan. The Bill proposes that no request for a privately initiated (i.e. no person or public body) amendment to the new official plan can be made until after the second anniversary of the first day that any part of the plan comes into effect.

Bill also provides a new provision with respect to the removal of the need to review areas of employment every five years. An existing *Planning Act* requirement to confirm or amend the official plan every five years in relation to policies dealing with areas of employment, including the designation of areas of employment and policies dealing with the removal of land from areas of employment, would also be removed.

#### **Comments:**

The City's Official Plan has been in effect since July of 2006. City Planning staff commenced the mandatory five-year review in 2011 based on a review of thematic policy

areas. This review is currently underway. Bill 73 suggests that the City would have to repeal and re-adopt its entire Official Plan to benefit from the one time opportunity the proposed legislation affords a municipality, to not be required to review its new official plan for 10 years. This is not a tenable proposal. The proposed legislation should afford the City the same benefit to limit mandatory updates of its Official Plan and the fulfillment of its provincial conformity exercises to every ten years and not on a one-time, but on a continuous basis.

Bill 73's removal of the mandatory five year review period of employment lands is positive and should be used as a precedent for a suite of revisions to the *Planning Act* which could include the following:

- A change to the official plan review period to 10 years, commencing from the date that the official plan policies identified by Council as forming part of the review, have come into effect;
- Freezing amendments to either new official plans or newly approved official plan policies stemming from comprehensive reviews of existing official plans, (and also comprehensive zoning by-laws), unless municipally initiated, for 2 years;
- Removal of 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 zoning by-law) after the end of the two year freeze; and
- Removal of the right to appeal any official plan amendments specifically intended to bring municipal official plans into conformity with provincial policy and plans, for which the Province has issued a decision of approval.

### **Impact:**

Aside from Bill 73's removal of the mandatory five year review period of employment lands, which enhances the City's ability to protect its employment lands, the revisions to the *Planning Act* presented by Bill 73 on matters discussed in this section of the report, would have nominal benefit to the City, as most are premised on the introduction and approval of a new official plan.

Official plan amendments (OPAs) resulting from a Provincial conformity exercise (statutory) and those that establish a detailed area based land use and built form context to guide development/redevelopment policies (e.g. Secondary Plans, Precinct Plans – non statutory), are prepared after extensive public engagement and input and build 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 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 "take root" and be implemented without the ability for persons or public bodies (outside of the municipality itself) to submit amendment applications.

Following a council's 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 should not be subject to on-going lengthy and costly legal challenges to justify the implementation of Provincial policies. Bill 73 takes a first step at addressing this issue, but does not go far enough.

The 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 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.

### **Recommendations:**

- City Council request the Minister of Municipal Affairs and Housing to amend the official plan review period in Bill 73 for all official plans (existing and new) to 10 years, commencing from the date that the official plan policies identified and adopted by Council as forming part of the statutory review come into effect. (Recommendation 5).
- City Council request the Minister of Municipal Affairs and Housing to amend Bill 73 to include a freeze on all privately initiated amendments to newly approved official plan policies stemming from comprehensive statutory and non-statutory municipal reviews of existing official plans and any concurrent implementing zoning by-laws, for a 2-year period. (Recommendation 6).
- City Council request the Minister of Municipal Affairs and Housing to amend Bill 73 to remove the right of appeal to the OMB of Council decisions that refuse a privately initiated official plan amendment application and its concurrent implementing zoning by-law for a 3-year period after the end of the 2-year freeze requested above. (Recommendation 7).
- City Council express its support to the Minister of Municipal Affairs and Housing for removing the mandatory five-year review period of employment lands in Bill 73. (Recommendation 8).

## **4. Providing Greater Weight to Newly Approved Municipal Zoning By-laws**

### **Comments:**

No minor variance applications will be permitted for two years with regard to new zoning by-law amendments, unless approved by Council. Bill 73 proposes to limit minor variances from the provisions of any zoning by-law amendment prior to the second anniversary of the

day on which the by-law was amended, unless Council has declared, by resolution, that the application for the minor variance is permitted.

Section 45 of the *Planning Act* authorizes Council to empower the Committee of Adjustment 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 minor variance applications cannot be made unless they are truly technical or housekeeping in nature in order, to allow the outcome of the re-zoning planning process and agreements to settle in and take hold. If municipalities can prevent minor variance applications for matters stemming out of newly approved site specific zoning by-laws for a three year period, this would also reduce minor variance appeals to the OMB, for development applications that may have also been recently adjudicated by the Board.

**Impact:**

Providing the legislative authority to prevent minor variance applications within a two year time-frame provides the public with greater certainty that any development approved through the re-zoning process is what will be built. Staff recommends that Bill 73 be further amended to a 3 year period in order to enable even more certainty following the enactment of the zoning by-law. By allowing Council to declare that the application for a minor variance is permitted during a three-year period, on an application-by-application basis, would still enable technical or truly housekeeping types of minor variances to be accommodated on a site by site basis. The Bill leaves it up to municipalities to determine what best constitutes a technical or housekeeping variance.

Bill 73 is clear in identifying Council's role to one of determining the merits of allowing a minor variance application to proceed because of their housekeeping or technical nature, and not on the specific merits of the application itself.

**Recommendation:**

- City Council express its support of Bill 73's proposed change to the *Planning Act* for the limitation on minor variances from the provisions of any zoning by-law amendment prior to the second anniversary of the day on which the by-law was amended, unless Council has declared by resolution that the application for the minor variance is permitted and with a request to the Minister of Municipal Affairs and Housing to further amend Bill 73 to expand the freeze period from the second to the third anniversary date on which the by-law was amended. (Recommendation 9).

## **5. Improving Accountability for Section 37 Community Benefit Expenditures**

### **Introduction:**

Bill 73 introduces provisions that would require monies collected under Section 37 to be paid into a special account and spent only on facilities, services and other matters specified in a Section 37 by-law. The Bill would also impose new annual reporting requirements on the municipal treasurer regarding expenditures from the special account. The annual reports will be required to identify any facilities, services or other matters for which funds from the special account have been spent including details of the amounts spent and the manner in which any capital cost not funded from the special account will be funded. This report is to be made available to the public.

### **Comments:**

The City currently maintains a database for community benefits and cash-in-lieu of community benefits. The money collected is contained in a special account called the "Planning Act Reserve Fund" and is invested in securities with the earnings derived from the investment of the money being paid into the special account. The City Treasurer provides information on reserve and reserve fund balances and projected year-end balances bi-yearly to the City's Executive Committee. These reports are available to the public on the City's website. The City Treasurer's report on the reserve fund activity does not currently contain the detailed information that would be prescribed by the proposed changes to the *Planning Act*. In recognition that information on Section 37 contributions and spending was not sufficiently accessible to the public in a format that is clear, understandable, and transparent, Council has directed Planning staff to prepare annual reports which will contain much of what would be prescribed through Bill 73 amendments. In addition, City staff has prepared a citizen's guide to Section 37 to provide information, clarity and transparency around the Section 37 process.

Staff are of the opinion that transparency regarding the use of Section 37 could be further enhanced if the Minister of Municipal Affairs and Housing amended Section 37 to allow for a value-based formula or quantum approach. No such amendment was included in the proposed Bill 73 amendments. It is the City's position that without explicit authority in the *Planning Act* to allow for such an approach, there remains an unaddressed concern that it could be interpreted as constituting an illegal tax.

### **Impact:**

The obligations introduced in the Bill are similar to Council's direction to City Planning staff in April of 2014 to prepare annual reports summarizing the previous year's achievements regarding Section 37 community benefit contributions.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG31.4>

## **Recommendations:**

- City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 amendments to provide more public accountability and transparency with regard to Section 37 community benefit contributions and expenditures. (Recommendation 10).
- City Council request the Minister of Municipal Affairs and Housing to 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. (Recommendation 11).

## **6. Improving Accountability for Section 42 Parkland Dedication & Cash-in-lieu & Using Alternative Parkland Dedication Rates**

### **Introduction:**

Before a municipality adopts official plan policies allowing it to pass by-laws under subsection 42(3) of the *Planning Act* to establish alternative requirements for parkland dedications and payment-in-lieu of parkland, it must have a parks plan in place that is made available to the public and that examines the need for parkland in the municipality. In preparing the parks plan the municipality will need to consult with every school board that has jurisdiction in the municipality and may also consult with any other persons or public bodies that the municipality considers appropriate.

The legislated minimum for cash-in-lieu collected under the alternative requirement is currently limited to the value of one hectare of land for each 300 dwelling units proposed; the new limit is one hectare per 500 dwelling units or at a lesser rate as may be determined by the municipality. The legislated minimum for the provision of actual parkland remains at a rate of one hectare for each 300 dwelling units proposed or at a lesser rate as may be determined by the municipality. These new alternative rate provisions don't apply with respect to official plan policies and alternative dedication rate by-laws already in effect in the given municipality.

The proposed amendments impose new annual publically accessible reporting requirements on the municipal treasurer regarding expenditures from the special account for parkland acquisition and improvement. Bill 73 also introduces a new definition for the term "payment in lieu" (currently referred to as cash-in-lieu by the City) to mean payment in lieu of a conveyance of land. It should be noted that changes similar to the ones affecting section 42 of the *Planning Act* are also proposed for section 51.1 of the Act, which deal with parkland conveyances and cash-in-lieu in the context of subdivision approvals.

### **Comments:**

The City complies with the proposed financial reporting requirements contained in the Bill. The City's existing alternative rate by-laws are based on an analysis of parkland acquisition

priority areas, i.e. areas of the city where Council has identified a need for parkland. The City's current alternative rate, applicable only to "Parkland Acquisition Priority Areas", is 0.4 hectares per 300 residential units. This alternative rate is equivalent to 1 hectare per 750 residential units and falls below both the existing limit of 1 hectare per 300 units and the proposed maximum limit of 1 hectare per 500 units for cash-in-lieu of parkland conveyance in Bill 73.

**Impact:**

The City does not have a city wide parks plan as described in Bill 73 to be "a parks plan that examines the need for parkland in the municipality". Therefore, any changes to the City's existing alternative dedication official plan policies and by-laws will require a city-wide parks plan that complies with the public consultation requirements proposed by the Bill.

The City intends to develop a parks plan which would include the following components: A strategy for the acquisition of parkland, which continues to prioritize underserved areas and addresses City priorities and methods for setting short and long-term parkland acquisition priorities to reflect demographics, existing high density areas, current development patterns and future development plans - to comply with the proposed legislation.

**Recommendation:**

- City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 amendments which require a municipality in adopting official plan policies allowing it to pass by-laws under subsection 42(3) of the *Planning Act* to establish alternative requirements for parkland dedications and payment-in-lieu of parkland, to have a parks plan in place that examines the need for parkland in the municipality and is made available to the public. (Recommendation 12).

**7. Introducing Authority to Limit Appeals in Development Permit System (DPS) Areas**

**Introduction:**

Bill 73 introduces provisions that authorize the Lieutenant Governor in Council to make regulations preventing privately initiated applications for amendments to new development permit by-laws and to the related official plan provisions, during an initial five-year period from the day that the by-law adopting the relevant official plan and development permit by-law, are passed.

**Comments:**

The introduction of this Bill 73 provision would have a positive impact on the City in its efforts to implement development permit by-laws in select areas of the City. A community visioning exercise is a key front-end component of Toronto's proposed Development



Permit System (DPS) process that is intended to result in area based official plan policies and development permit by-law provisions which more strategically address local planning issues, promote city building and provide all affected stakeholders with a greater degree of certainty, transparency and accountability. This visioning and extensive front-end planning work is intended to be the foundation for any specific official plan amendment (if necessary) and development permit by-law for the area. The proposed change preventing applications for amendments to new development permit by-laws and related area based official plan provisions, during the initial five-year period after one or both come into force, will support and advance municipal policies that have been adopted in a process where the public and all affected stakeholders have been able to participate in and have their input considered. The 5 years will provide the City with an appropriate amount of time to implement and monitor the efficacy of a development permit system for a particular area.

**Impact:**

The City's ability to rely on this proposed legislative change in Bill 73 is dependent on the Province amending Ontario Regulation 608/06 that contains the provisions, procedures and authority for the establishment of a Development Permit System. Provincial staff has not provided details with regard to the timing of the stakeholder engagement process, if any, proposed in association with this regulatory change.

Bill 73 also provides that the Lieutenant Governor in Council can amend the DPS regulation referred to above to allow municipalities to continue referring to the DPS as a "development permit system" with "development permit by-laws" or to rename the system to "community planning permits system" and "community planning permit by-law".

The name-changing provisions currently contained in Bill 73 do not have any implications as the City has already adopted its enabling city-wide official plan amendment (OPA No. 258) for a Development Permit System.

While the Province may prefer to identify the system as one that is "community" driven rather than "development industry" driven, staff believe that this proposed amendment is unnecessary as no changes are proposed that would change how the system is implemented.

**Recommendation:**

- City Council express its support to the Minister of Municipal Affairs and Housing with regard to Bill 73 proposing to prohibit amendments to development permit system (DPS) initiated official plan policies and related development permit by-laws for 5 years. (Recommendation 13).

**8. New Prescribed Criteria to Assist in Determining a Minor Variance**

**Comments:**

Bill 73 provides for the ability to have prescribed criteria in place to which a minor variance would need to conform, in addition to satisfying the existing requirements of Section 45 (1) of the *Planning Act* which speak to the 4 tests a minor variance must meet. The Province is setting up a working group of stakeholders to review this matter and propose solutions. By not entrenching any further test or criteria in the Act and proposing to address this matter by regulation, enables greater flexibility in moving towards a more consensus based solution that may in fact, provide some variation for minor definitions and tests potentially more responsive to variations in needs and priorities for different municipalities across the Province.

**Impact:**

Impact will be determined upon the introduction of a provincial regulation that provides prescribed criteria to which a minor variance must conform that is satisfactory to Council and which reflects the City's input into the stakeholder consultation process.

**Recommendation:**

- City Council express its support to the Minister of Municipal Affairs and Housing's initiative to introduce a provincial regulation that provides prescribed criteria to which a minor variance must conform. (Recommendation 14).

## **9. Embracing and Modernizing Citizen Engagement**

### **Introduction: Mandatory Planning Advisory Committees**

Currently, the establishment of a planning advisory committee by a municipality is voluntary. Bill 73 proposes to make the establishment of a planning advisory committee mandatory. All planning advisory committees are required to have at least one member who is neither a councillor nor a municipal employee. Planning advisory committee members are to be chosen by Council. The proposed legislation does not seek to further define or prescribe the nature of the planning advisory committee, leaving it up to municipalities to provide the terms of reference for establishing the committee. Bill 73 speaks to Council having the ability to determine if planning advisory committee members are to be remunerated.

**Comments:**

The City has a robust citizen engagement process for planning approval matters, one which supplements and enhances statutory engagement with non-statutory community outreach. The City does not have a Citizen Planning Advisory committee in place to provide advice on planning matters, as contemplated by Bill 73. In order for a planning advisory committee to be established, Council would have to approve the Terms of Reference for the committee in accordance with Chapter 27, Section 130(B) of the Toronto Municipal Code. The planning advisory committee would be required to follow City by-laws, policies and legislation including open meeting requirements under the *City of Toronto Act, 2006*, and

the City's Public Appointments Policy. City Planning Division could provide policy advice and support for the committee.

**Impact:**

The City pro-actively engages the public in its planning process and continually looks at ways of effectively broadening and improving its engagement strategies. Putting forward a traditional model for citizen engagement within an increasingly complex planning approval environment, may not be the most effective model to better engage Toronto's stakeholders.

Staff are of the opinion that the intent and spirit of Bill 73 could be upheld through a more innovative citizen engagement delivery model, as put forward in City Planning Division's "Growing Conversations" initiative which has set out to:

- Better understand the strengths and weaknesses of the current community planning process in Toronto;
- Explore new engagement models and tools, particularly those that are intended to help build capacity, inform participation and build stronger relationships between the community, stakeholders and the City of Toronto;
- Explore opportunities and best practices related to implementing City Planning Advisory Panels in each Ward or District of the City;
- Explore opportunities to broaden participation by engaging new audiences; and
- Identify other potential opportunities to improve engagement in the current community planning process.

The implementation of City Planning Advisory Panels, which could provide advice to the City Planning Division on a range of planning matters ranging from development applications to policy development and which are under consideration as part of the Division's "Growing Conversations" initiative, would meet the requirements of Bill 73, as they would be Program Advisory Bodies, as opposed to Council Advisory Bodies. A Program Advisory Body or Bodies, which are currently permitted through section 136 of COTA, can be integrated into the overall planning process and their advice can ultimately inform City Planning's recommendations to Council. This approach would better achieve the goal of broadening participation in city building processes, than a Council Advisory Body, as the latter would function outside of the existing planning consultation and approvals process, providing separate advice to Council.

**Recommendation:**

- City Council request the Minister of Municipal Affairs and Housing to exempt the City of Toronto from proposed section 8(4) of Bill 73, dealing with the establishment of mandatory planning advisory committees and enable the City to establish its planning advisory committee(s) through section 136 of the *City of Toronto Act, 2006*. (Recommendation 15).

## **Introduction: Mandatory Public Consultation Policies**

Bill 73 proposes mandatory Official Plan consultation policies. The Bill proposes that policies regarding procedures for informing and obtaining the views of the public, be stated in the Official Plan, in respect of a broader number of planning documents, which would include: official plans, official plan amendments, zoning by-laws, plans of subdivision and consents.

### **Comments:**

The City currently has public consultation policies in its Official Plan. In keeping with the intent of the proposed legislation, these policies would have to be amended to, at a minimum, include reference to the additional planning documents not currently referenced in the policy, namely plans of subdivision and consents.

### **Impact:**

Staff would need to incorporate into its work program the process of updating the Official Plan with regard to procedures for informing and obtaining the views of the public. This provides City Planning Division with the opportunity to move forward with updating its Official Plan public consultation and engagement policies that, while reflecting the direction provided by Bill 73 would also enable the Division's "Growing Conversations" citizen engagement strategy initiative <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=8a9351bff89c6410VgnVCM1000071d60f89RCRD> to be reflected in updated policies. Given the magnitude and variety of public outreach and engagement activities the City undertakes, the City provides residents a greater, more meaningful say by continuing to engage outside the conformity restrictions imposed by the Official Plan. City Planning staff discussions with Provincial staff have confirmed that Bill 73's primary goal is to require municipalities who have no public engagement strategy in place, to provide publically accessible minimum standards.

### **Recommendation:**

- City Council express its support with regard to Bill 73 making it mandatory for all municipalities to provide policies, appropriate for the given municipality, regarding procedures for informing and obtaining the views of the public in the Official Plan. (Recommendation 16).

## **Introduction: Alternative Public Notice Policies in an Official Plan:**

Bill 73 reaffirms that the City can introduce and establish alternative measures for providing notice regarding the details related to official plan amendments and proposed zoning by-laws and procedures for informing the public of the ability to participate in associated public meetings and open houses, but only if alternative notice measures are included in its Official Plan. The Bill expands these existing provisions by introducing the opportunity to provide alternative measures in connection with notices of:

- public meetings and the notice of application, including details with respect to how to obtain information and material provided in support of, subdivision and consent applications; and
- complete applications, (that is, the completeness of privately initiated OPAs, zoning by-laws, subdivision and consent applications).

The ability to introduce alternative measures for informing the public continues to be voluntary. If the City's Official Plan sets out alternative notice provisions, then the prescribed minimum requirements established under the *Planning Act* and its notice related regulations would not apply.

**Comments:**

The *Planning Act* and various regulations passed under the Act prescribes, among other matters, how notice is to be given and to whom, with respect to the official plan, official plan amendments, zoning by-laws, subdivisions, consents and minor variance applications. The City currently follows the legislative and prescribed requirements for issuing notice as it does not have alternative notice provisions in effect. Although Bill 73 takes a progressive step forward, enabling municipalities to determine alternative means for giving notice and incorporating the opportunity to include electronic and on-line notice, for a greater number of notice and application types, the City would better benefit from having alternative notice requirements for a broader list of application types and notices of decisions, prior to moving forward with developing alternative notice requirements.

The fulfillment of the prescribed notice of approval requirements can be costly, often requiring that complete by-laws be published in local newspapers or mailed to an extensive list of interested or affected residents. Further, the prescribed requirements may not provide the City with the ability to reach the widest audience of interested persons and public bodies. The City has made previous requests to the Province to revise these requirements in the regulations and further, to include notice of decisions of official plans, official plan amendments, zoning by-laws, subdivisions, consents and minor variances as matters to be also addressed in alternative notice requirements in the City's Official Plan.

Providing the opportunity to examine alternative measures such as electronic and on-line notices and other more innovative and responsive methods for informing the public and implementing those policies in the Official Plan could reduce costs and provide more residents with information about planning and development activity around them.

**Impact:**

If Council determines that alternative notice provisions should be developed for providing notice on planning applications, public meetings and open houses and complete applications, staff would be required to develop the appropriate procedures and technologies on consult on these policy prior to amending the Official Plan. Without further amendments to Bill 73, the costly notice requirements for notices of a decision and in particular notice provisions as they apply to the passing of zoning by-laws, as well as the associated costs, will continue to apply. The challenge for City staff will be to ensure that

new alternative notice measures will be more strategic and effective than the prescribed minimum standards in the *Planning Act*, in notifying and engaging a greater and more diverse number of people, while also being cost effective.

Bill 73 does not explicitly address the ability to introduce alternative notice measures for Development Permit System (DPS) by-laws. While staff recognize that the zoning provisions of the *Planning Act* and COTA and the regulations made under those sections apply to the adoption of a DPS by-law, its enabling Regulation also has distinct and additional notice requirements. To ensure clarity, the City would benefit from provisions in the Bill which would explicitly permit alternative notice measures related to DPS by-laws and associated applications.

### **Recommendations:**

- City Council express its support with regard to Bill 73 providing legislative authority to make official plan policies regarding procedures for permitting alternative notice measures for informing the public for a wider number of planning application types. (Recommendation 17).
- City Council request the Ministry of Municipal Affairs and Housing to amend Bill 73 to permit the introduction of alternative notice official plan policies for the notice of decision (regarding both adoptions and refusals) of official plans, official plan amendments, zoning by-laws, plans of subdivision, consents and minor variances. (Recommendation 18).
- City Council request the Ministry of Municipal Affairs and Housing to amend Bill 73 and Ontario Regulation 608/06 (Development Permits) to provide the legislative authority to make official plan policies regarding procedures for permitting alternative notice measures for informing the public of development permit system by-laws, permit applications and notice of decisions. (Recommendation 19).

## **10. Providing an Explanation for Planning Decisions**

### **Introduction: The Effect of Public Submissions on Planning Decision Makers**

Bill 73 will require Council to provide a "brief" written explanation, in its notice of decision, of the effect, if any, that written submissions relating to certain planning applications made to Council before its decision and any oral submissions relating to the same planning matter that were made at the public (statutory) meeting, had on Council's decision. Decision makers required to explain the effect of written and oral submissions on their decisions for Toronto include: Council for official plans, official plan amendments, zoning by-laws and plans of subdivision and the Committee of Adjustment for minor variances and consents.

## **Comments:**

The *Planning Act* requires a municipality to hold public meetings to consider official plans, official plan amendments, zoning by-laws, plans of subdivision, minor variances and consents. In the City of Toronto, the responsibility to hold public meetings with regard to official plans, official plan amendments and zoning by-laws has been delegated to the four Community Councils and if the planning application has City-wide significance, the Planning and Growth Management Committee. The aforementioned are considered to be Standing Committees of Council. Once an application has been finalized, the City issues a formal notice of the public meeting in accordance with the requirements of the *Planning Act*.

Recommendation Reports to Committees provide a summary of comments received from the public, public bodies and special interest groups and how they were considered in the development of staff recommendations on the application. Where a statutory or public meeting is conducted, it provides an opportunity as a public forum for discussion on the merits of the proposal. Proposals are presented at the meeting and the public can write in (written submissions), attend and make oral submissions. Community Council or Planning or Growth Management Committee has the opportunity to evaluate the proposed matter, and the impact that the written and oral submissions had on its decision. Standing Committee and Council meetings are videotaped. Currently the City does not transcribe oral submissions received at the statutory public meeting held with regard to the planning matter or application.

Following the public portion of the meeting, Community Council and/or the Planning and Growth Management Committee make recommendations on the application to City Council for a final decision. Council's decision can be to adopt, amend, defer, or refer the application back for further study or action. The list of written submissions received by the Clerk is provided as part of every decision of the Standing Committees and of Council and are a matter of public record, as is the list of deputants. Transcribing of oral submissions is not currently undertaken. It should be noted that members of the Standing Committees and Council, each receive an information package which includes the written submissions received to date and the list of deputants who appeared at the public meeting.

Approved official plan and zoning by-law items are confirmed by by-law. The City is required to issue a notice of approval within 15 days of City Council's decision. Community Councils and/or Planning and Growth Management Committee are empowered to make recommendations on plans of subdivision to City Council. City Council has delegated the approval authority for Plans of Subdivision to the Chief Planner and makes recommendations to the Chief Planner based on the input of the Community Council and/or Planning and Growth Management Committee. Notice is issued by the City within 15 days of the Chief Planner's draft approval.

City Council has also appointed and delegated its authority to the Committee of Adjustment, which consists of citizen member panels who regularly hold public hearings in each Community Council area. The panels consider applications for minor variances and consents.

Written and oral submissions received at statutory public meetings form part of the continuum of public engagement that the City has in place in considering planning applications and dealing with planning matters. While staff appreciate the intent behind this proposed amendment to the *Planning Act*, to better acknowledge and codify the impact public input has on decision makers, based on the manner in which planning decision making has evolved at the City (namely Council's reliance on Standing Committees), operationalizing this proposed amendment presents logistical challenges. The current decision making framework and committee structure at the City of Toronto was established by the *City of Toronto Act, 2006*. The decision making process at the City of Toronto involves committees that report to City Council. Committees propose, review and debate policies and recommendations before they arrive at City Council for debate. The public can only make deputations at the committee level.

**Impact: Access to oral submissions prior to decision-making**

Under Bill 73, the City would have to prepare transcripts or videotaped excerpts of oral submissions heard at the statutory public meeting held by the appropriate Standing Committee prior to Council making its decision to approve the official plan, official plan amendments, zoning and subdivision applications.

The issue of providing transcripts or videotaped excerpts of oral submissions heard by the Committee of Adjustment, although feasible, might not be necessary in this instance, as the Committee of Adjustment holds the public meeting and is the decision-maker. However, the need to have transcripts or video excerpts of oral presentations from Committee of Adjustment public meetings, could be necessitated by another proposed amendment in Bill 73 dealt with below, under the heading "Impact on the hearing of appeals".

**Impact: Manner in which Council and the Committee of Adjustment would provide its brief explanation of the effect that written and oral submissions had on their decision**

In order to integrate this proposed requirement into the City's planning approval process, these two decision-makers would need to provide their brief explanations as an on-going part of their approval procedures and protocols. The proposed amendments appear to leave the matter of determining what the written explanation should contain, to each municipality. In the case of the City's agenda items relating to planning applications affected by Bill 73, each such item will have to be held at Council, to then be discussed by Council to determine its effect, if any, on their decision. A protocol will have to be established to determine which Councillors will routinely ask for the given matter to be held for discussion. The manner, in which any discussion on the effect of the written and oral submissions will be recorded and explained, will also have to be determined. For instance, a motion template may need to be prepared, that will allow staff to quickly translate the outcome of discussion into a motion to be adopted by a majority of members present that speaks to the fact that Council reviewed all written submissions received to date and all oral submissions received at the public meeting and took these submissions into account in adopting or further amending recommendations from Community Council or Planning and Growth Management Committee, as the case may be. This standardized



decision statement would be reiterated in the notice of decision. A similar practice could be incorporated as part of Committee of Adjustment decision-making.

### **Impact: On the hearing of appeals**

While Staff note that Bill 73 introduces a requirement that the OMB "have regard to" the written and oral submission from the public relating to a planning matter, when dealing with an appeal, it is unclear how this obligation can be reconciled with the rules of evidence. The central problem with the proposed obligations to record, summarize and forward to the OMB, the comments and submissions of all of the deputants who spoke at Committee or Community Council regarding a development application is that the requirement may have no material impact from an evidentiary perspective. The current rules regarding evidence which governs the Courts and the OMB is that if evidence is to be given any weight it must be presented in person by the witness and under oath. In this way procedural fairness is assured. The witness has sworn an oath to tell the truth and has presented his or her evidence orally to the Board Chair and is present in the hearing room to have his or her evidence be subjected to cross-examination in order to test the credibility of the evidence presented. In the absence of a witness to substantiate a written document the Courts and the Board treat the proposed evidence as "hearsay" and will not give it any evidentiary weight. As such, the Bill 73 requirement that all oral and written submission to Council be summarized and forwarded to the Board is largely inconsequential because the Board Chair is not obliged to admit them and even if the Chair did consider them, it would be legally improper to give them any evidentiary weight in the absence of the author attending at the Board, swearing an oath and giving oral testimony verifying the contents of his or her submission to Council. This is the current practice for presenting evidence before the OMB and without some other legal revisions, Bill 73 would have no material impact on how evidence is presented and tested before the OMB. The net effect of these proposed changes to the reporting obligations of the municipality to the OMB is without an evidentiary foundation and is therefore, adding a cost to the municipality with no material benefit.

### **Impact: Summary**

Although this proposed amendment is well intentioned in seeking to acknowledge the specific impact of statutory public input on the planning process, it does not respond well from an implementation standpoint, to Toronto's planning decision-making structure. Nor does it accommodate the totality of Toronto's public consultation efforts for larger or more complex planning applications, many of which are non-statutory in nature. This provision is geared towards a minimum standard that can be applied to a municipality that has a much simpler governance and decision-making process and one which is faced with making decisions with regard to a much lower volume of applications. It may have the effect of raising public expectations, without actually providing any material benefits for improving the outcomes of the public consultation process for planning matters and as it relates to the particular challenges and opportunities Toronto faces in broadening its engagement strategies in respect of the planning process.

## **Recommendations:**

- City Council request the Minister of Municipal Affairs and Housing meet with appropriate City representatives in order to continue a dialogue on options the City has vis-a-vis Bill 73 proposed amendments requiring Council to explain the effect of written and oral submissions on their decisions, in light of the City's governance and decision-making process with regard to planning applications and with regard to the number and volume of planning applications subject to this proposed amendment. (Recommendation 20).
- City Council request the Minister of Municipal Affairs and Housing to exempt the City from amendments proposed for subsections 17(23.1) and (35.1), 22 (6.7), 34 (10.10) and (18.10), 45 (8.1), 51 (38), 53 (18) of the *Planning Act* to explain the effect of written and oral submissions on Council's decisions and undertake a consultation process with the City for a made-in-Toronto alternative, which embodies the intent of Bill 73 around this matter but better responds from an implementation standpoint, to Toronto's planning decision-making structure. (Recommendation 21).

## **11. Extending Council's Timelines for Making Planning Decisions**

### **Introduction: Suspending Timelines for Triggering Appeals of Official Plans & Official Plan Amendments**

Currently, the *Planning Act* allows any person or public body to appeal an approval authority's failure to give notice of a decision in respect of all or part of an official plan or official plan amendment within 180 days of receiving the official plan or official plan amendment. Bill 73 provides for a "suspension of timelines" for triggering appeals of official plans and official plan amendments for one extension period enabling the 180 period to be extended by 90 days, when notice is given. In the case of a privately initiated application, the person or public body requesting the amendment can exercise the right to the extension by giving written notice to the approval authority and in all other cases, the municipality may exercise its right to the extension by giving written notice to the approval authority. The same right to an extension may also be exercised by the approval authority, upon written notice to the person, public body, or municipality, as the case may be. Once an extension is in effect, either the party requesting the extension or the party receiving the request may terminate the extension at any time by written notice.

### **Comments:**

Where the Minister of Municipal Affairs and Housing is the approval authority for the City's Official Plan and related Official Plan Amendments stemming from an Official Plan 5-year review and provincial conformity exercise and it appears that notice of a decision will not be provided within 180 days, the City can, by providing written notice to the Minister, extend the period for a decision for up to 90 days. The Minister of Municipal Affairs and Housing as the approval authority can also give notice to the City for the

extension period in the course of approving the City's Official Plan and any amendments stemming from the 5-year review and provincial conformity exercise. In the case of a privately initiated official plan amendment (an application to the City under Section 22), the person or public body that initiated the official plan amendment can request the 90 day extension by providing written notice to Council as the approval authority.

**Impact:**

Staff understand that the 90-day extension only applies to new official plans and municipally initiated official plan amendments which are not exempt from Provincial approval, i.e. the City's official plan amendments which are sent to the Ministry for approval. Under Ontario Regulation 525/97 (as amended by Ontario Regulation 344/98 and other amending regulations) the City of Toronto is identified as a municipality whose official plan amendments are otherwise exempt from Municipal Affairs and Housing approval. Accordingly only the Ministry's review timelines would be extended since the new provisions would only apply to conformity based official plan amendments or new official plans. The City's review timelines for other municipally initiated official plan amendments, for which it has delegated authority, would not be extended.

Staff generally support the ability to request an extension. However, given the frequency with which Council meets, there may not be sufficient time to have Council provide direction and give notice in a manner which then could maximize the use of the full 90-day review period provided by the Bill. It is the opinion of Staff that given the limited ability of Council to provide immediate direction to request an extension, a standardized mechanism will need to be identified that acts as a trigger for planning reports that go to Council that alerts Council to the 180 day deadline for making a decision and allows Council to determine whether to activate or request activation of the extension or not. Alternatively, all future planning reports containing recommendations that deal with approving or refusing official plans and official plan amendments could also include a standard direction that notice be sent without reporting back to Council, if it appears Council's 180 day deadline will not be met, when, or as determined to be appropriate, by the City Solicitor.

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 Council. Staff are of the opinion that the Province should extend official plan amendment application processing timeframes from 180 days to 240 days in the *Planning Act* before "failure to proceed" appeals could be made. This recommendation is partially addressed in Bill 73. Times for the review of municipally initiated applications that are not exempt from Provincial approval increased from 180 to a maximum of 270 days (inclusive of the 90-day time-out period). Bill 73 does not address municipally initiated official plan amendments that don't require Provincial approval as these remain at the 180 day maximum with no opportunity to apply the 90-day time-out period.

**Recommendations:**

- City Council express its support to the Minister of Municipal Affairs and Housing of 90-day voluntary time-out period before official plan, official plan amendment

and zoning by-law appeals proceed to the OMB and request the Minister to consider applying this 90-day time-out period within the context of extended timelines for "failure to proceed" appeals as per the recommendations below. (Recommendation 22).

- City Council request the Minister of Municipal Affairs and Housing to extend planning application processing timeframes in the *Planning Act* before municipal "failure to proceed" appeals can be made for official plans and all official plan amendment applications (municipally and privately initiated) from 180 to 240 days; (Recommendation 23) and
- City Council request the Minister of Municipal Affairs and Housing to extend planning application processing timeframes in the *Planning Act* before municipal "failure to proceed" appeals can be made for zoning by-laws that run concurrently with official plan amendments from 180 days to 240 days and zoning by-laws from 120 to 180 days. (Recommendation 24).

### **Introduction: Voluntary Alternative Dispute Resolution (ADR)**

Bill 73 introduces voluntary mediation into the planning approval process by allowing Council to require a 60-day period for alternative dispute resolution after an appeal has been made. Council must give notice of its intention to use dispute resolution techniques to all appellants but may choose to invite only those appellants Council considers appropriate and also any other persons or public bodies also deemed appropriate to participate. In all cases, the applicant must be invited to participate, even if the applicant is not an appellant. Participation in the dispute resolution process by the persons and public bodies, who receive notices of invitation to participate, is voluntary. An invitation by Council for the Minister or appropriate approval authority to participate appears to be mandatory. When Council gives notice of its intention to use ADR, the notice of appeal, which is otherwise forwarded to the OMB within 15 days after the last day for filing a notice of appeal, will be extended to a period totalling 75 days.

### **Comments:**

Bill 73 introduces voluntary mediation and other alternative dispute resolution techniques to provide for increased opportunities, prior to matters being seized by the OMB, to resolve certain appeals including those related to adoption and approval of official plans and official plan amendments, zoning by-laws, plans of subdivision and consents. This "time out" period after an appeal has been made to a Council decision, provides City staff and Council with an additional opportunity to find a resolution by way of ADR, on matters under dispute, which would otherwise be adjudicated at the OMB. This process gives Council the first right of refusal in determining whether a mediated settlement is a possible outcome, rather than affording this opportunity to the Ontario Municipal Board. It can be a more cost effective and accessible option for all appellants, including community groups.

## **Impact:**

Although there are potential timing and cost implications for the City in setting up an ADR process, there are also timing of application approval and cost savings for applicants, the City and parties to the appeal to be had, by resolving disputes with regard to planning applications prior to them being vested with the OMB. In order not to slow the current pace of Council's consideration of planning application approvals Council could also consider delegating the decision to engage in ADR and the invitation to participate, to the Chief Planner and/or the City Solicitor. The 60 day time-out period is a tight one for Council to follow, especially as it would appear that the outcomes of the ADR would need to be reported on and a decision made by Council by no later than the 60<sup>th</sup> and final day of the ADR period, in order for the 15-day appeal period, relating to the most recent Council decision, to kick in. A 90 day time out period would better meet the City's needs.

## **Recommendations:**

- City Council supports this proposed revision to the *Planning Act* for a time-out period before the 15-day appeal period kicks in, but requests the Minister of Municipal Affairs and Housing to further amend Bill 73 to extend the period required for alternative dispute resolution after an appeal has been made from 60 to 90 days. (Recommendation 25).
- City Council request the Minister of Municipal Affairs and Housing to confirm that the costs of mediation and alternative dispute resolution borne by the City further to this proposed amendment to the *Planning Act* being enacted, can be incorporated into the City's planning application fees structure as per Section 69 (1) of the *Planning Act*. (Recommendation 26).

## **CONCLUSION**

City Planning staff have led a detailed review of Bill 73 in consultation with the City Clerk's Office, the City Manager's Office, Legal Services, Parks, Forestry and Recreation, and Policy, Planning, Finance and Administration Divisions, to more fully understand and advise Council on the impact of this Bill on the City's planning approvals process, the outcome being 29 recommendations for Council's consideration.

Bill 73 embodies some positive changes to the *Planning Act*. A number of the proposed amendments are intended to ensure that Council approved policies are better protected and citizen engagement in planning matters is better recognized as part of the statutory decision making process. Many of these well-intentioned amendments however, have limited applicability for the City. Accordingly, staff are of the opinion that the Province should also consider, where appropriate, "made-for-Toronto" versions of the amendments that recognize the complexity and maturity of the City and its unique development pressures. Consideration could therefore be given to certain amendments to the *Planning Act* introduced through Bill 73, being addressed as part of the upcoming review of the *City of Toronto Act, 2006* (COTA).

Bill 73 does not address matters related to Ontario Municipal Board (OMB) reform. Premier Wynne announced on September 25, 2014, that the Minister of Municipal Affairs and Housing would be leading a further review of the OMB in order to improve its role within the broader land use planning system. Bill 73 should be evaluated within this context and with the expectation that further draft legislation could be forthcoming either this year or next with regard to this further Provincial initiative. Recommendation 28 speaks to the City's support for this review.

Lastly, Recommendation 27 of the report is intended to bring to the attention of the Minister of Municipal Affairs and Housing, that a number of recommendations relating to *Planning Act* reform, as summarized in Attachment 1 of this report, and as adopted by Council on Dec 16, 2013, have not been addressed in Bill 73, but continue to be important for the City as part of any legislative efforts currently being undertaken to improve the land use planning and appeals process in Ontario and that an opportunity still exists to incorporate these recommendations into the current review of the Planning Act.

As Bill 37 moves through the stages of the legislative process to become law, City staff are available for further discussions with the Province and welcome the opportunity to be part of upcoming stakeholder consultation working group sessions.

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## SIGNATURE

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## ATTACHMENT

Attachment 1: City Council's 2013 Recommendations to the Minister of Municipal Affairs and Housing with regard to Improving the Land Use Planning & Appeal System in Ontario, Not Addressed in Bill 73

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## Attachment 1

### **City Council's 2013 Recommendations to the Minister of Municipal Affairs and Housing with regard to Improving the Land Use Planning & Appeal System in Ontario, Not Addressed in Bill 73**

The following recommendations adopted on Dec 16, 2013 by Council <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.16> have particular relevance within the context of the City's review of *Bill 73*, as follows:

#### **1. Recognizing the Importance of Council Decisions**

- City Council request the Minister of Municipal Affairs and Housing to further amend the *Planning Act* to better recognize the importance of the decisions of Council and apply less discretion of those decisions by substitute decision-makers, such as the Ontario Municipal Board, by replacing the current “shall have regard to” review standard for municipal decisions to a “shall be consistent with” standard.
- City Council request the Minister of Municipal Affairs and Housing to further amend the *Planning Act* by introducing language limiting the OMB's authority to make the determination to admit new evidence without the written consent of City Council.

#### **2. Recognizing the Importance of Well Designed Buildings & Good Contextual Fit**

- City Council request the Minister of Municipal Affairs and Housing to recognize the importance of built form in the *Planning Act* by further amending Section 2 - Provincial interest, subsection (q) of the Act by adding the following italicized words to the subsection; 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 and by amending Section 16 – Contents of official plan, subsection (1)(a) of the Act to include the words "built environment" in addition to the natural environment, so that the subsection reads: (a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic, natural and "built environment" of the municipality or part of it.

#### **3. Diminishing the OMB's Sphere of Influence Over Municipal Decision-Making**

- City Council request the Minister of Municipal Affairs and Housing to amend the *Planning Act*, the *Heritage Act* and the *City of Toronto Act, 2006* to abolish

Ontario Municipal Board (OMB) jurisdiction over Zoning By-law Amendments, Official Plan Amendments, Site Plans, Urban Design Guidelines, Subdivision and Condominium Plan Approvals and Community Improvement Plans and appeals under the Heritage Act.

- City Council request that the Ontario Municipal Board be structured with a panel comprised of residents of Toronto, which would have exclusive jurisdiction over appeals arising from Toronto.
- City Council support the request of the City of Mississauga to the Minister of Municipal Affairs and Housing for public consultations on these requests, and advise the Minister of Affairs and Housing of its support in writing and to offer assistance and liaise with local stakeholders including business owners, property owners, residents, and individuals and corporations working in land use development and planning.
- City Council request that should during the Ministry and City-lead public consultations it be revealed that municipal jurisdictions wish to remain subject to OMB hearings, then Toronto City Council and other municipal jurisdictions by a majority vote, be granted the option of removal from the OMB's purview.

#### **4. Mechanisms to Ensure the Provision of Inclusionary Housing**

- City Council request the Minister of Municipal Affairs and Housing to amend the *Planning Act* and/or the *City of Toronto Act, 2006* to introduce explicit authority in legislation and affected regulations, such as Ontario Regulation 608/06, to allow municipalities to enact inclusionary housing powers that are distinct from Section 37 *Planning Act*.