



REPORT FOR ACTION

Bill 139 - Amendments to the Planning Act and the Province's Land Use Planning Appeal System - Implementation

Date: April 27, 2018

To: Planning and Growth Management Committee

From: City Clerk, Chief Planner & Executive Director, City Planning Division and City Solicitor

Wards: All

SUMMARY

The *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139) received Royal Assent on December 12, 2017 and has been proclaimed into law as of April 3, 2018. Bill 139 makes substantial changes to the planning system in the Province and will have significant impacts on procedures, processes and resources at the City. This report sets out those impacts and recommends the funding of resources required to implement Bill 139.

RECOMMENDATIONS

The City Solicitor, City Clerk and Chief Planner and Executive Director recommend that:

1. City Council increase the 2018 Approved Operating Budgets and associated complement for the following City Programs to fund additional salary, benefit, furniture and computer equipment costs associated with the staffing needs required to implement new processes arising out of Bill 139, resulting in a total cost of \$0.617 million in 2018 and an incremental cost of \$1.225 million in 2019, to be fully recovered from the Development Application Reserve Fund:

a. That Legal Services' 2018 Approved Operating Budget be increased by a total of \$0.145 million gross and \$0 net, comprising of \$0.135 million gross and \$0 net to fund 2.0 permanent positions and \$0.010 million gross and \$0 net to fund one-time furniture and computer equipment costs for the additional complement;

b. That City Planning's 2018 Approved Operating Budget be increased by a total of \$0.402 million gross and \$0 net, comprising of \$0.352 million gross and \$0 net

to fund 9.0 temporary positions and \$0.050 million gross and \$0 net to fund one-time furniture and computer equipment costs for the additional complement;

c. That City Clerks' Office 2018 Approved Operating Budget be increased by a total of \$0.070 million gross and \$0 net to fund 2.0 permanent positions.

2. City Council authorize the continuation and conversion of five (5) existing temporary to five (5) permanent solicitor positions in Legal Services, previously approved by City Council in 2017 for a 2 year period, with continued funding from the City Planning Development Application Reserve Fund.

3. City Council direct that the 2019 Comprehensive Review of Planning Application Fees include the functions required to implement Bill 139, as outlined in this report.

4. City Council request the Chief Planner, as part of City Planning's 2019 Budget submission, to report on the resource requirements to:

a. advance the policy development and implementation of Inclusionary Zoning;

b. advance the legislated conformity exercise with the Growth Plan for the Greater Golden Horseshoe (2017); and

c. implement related zoning changes.

5. City Council direct that the Chief Planner and City Solicitor report to the Planning and Growth Management Committee in the first quarter of 2021 on permanent staffing levels required for the implementation of Bill 139, taking into account the findings of the End-to-End Review of the Development Review Process.

6. City Council direct that the End to End Review of the Development Review Process currently underway, include consideration of any operational changes and improvements required as a result of Bill 139.

FINANCIAL IMPACT

The following budget adjustments to the 2018 Approved Operating Budgets and 2019 Operating Budget are required to implement new processes arising out of Bill 139. Incremental costs for the additional complement for the following City Programs to fund for salary, benefit, furniture and computer equipment costs associated with the staffing needs required, and the cost of providing additional notices as per the new legislative requirements in Bill 139, resulting in a total cost of \$0.617 million in 2018 and an incremental cost of \$1.225 million in 2019, to be fully recovered from the Development Application Reserve Fund.

Table 1 - Budget Impact (In million dollars)

Division	Position	No. Positions	Status	2018 Salary & Benefit Adjustment	Furniture & Computer Equipment Costs	Total 2018 Budget Adjustment	2019 Incremental Annualized @ 1.25% COLA	Second Notices Costs	Total 2019 Incremental Costs
Legal Services	Solicitor 1	2.0	Permanent	0.135			0.275		
		2.0		0.135	0.010	0.145	0.275	-	0.275
City Planning	Senior Planner, Community Planning Planner, Urban Design/SIPA/Zoning	4.0	Temporary	0.170			0.347		
		5.0	Temporary	0.181			0.370		
		9.0		0.352	0.050	0.402	0.717	-	0.717
City Clerks	Registrar	1.0	Permanent	0.040			0.082		
	Assistant Registrar	1.0	Permanent	0.030			0.061		
		2.0		0.070	-	0.070	0.143	0.090	0.233
Total		13.0		0.557	0.060	0.617	1.135	0.090	1.225

The Interim Chief Financial Officer has reviewed this report and agrees with the financial implication information.

DECISION HISTORY

Bill 139 Impact of Proposed Changes

On January 31, 2018, City Council adopted a report from the City Solicitor and the Acting Chief Planner and Executive Director providing comments and recommendations regarding proposed transition regulations associated with Bill 139.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG17.4>

At its meeting of November 7, 2017, City Council adopted a report dated September 29, 2017 from the Acting Chief Planner and Executive Director providing information on Bill 139 and the proposed changes to the *Planning Act*. In adopting Item PG23.7, City

Council requested the City Solicitor to report to Planning and Growth Management Committee with recommendations for any potential changes in the City's processes and procedures that may be required to implement the legislation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG23.7>

Bill 139 received Royal Assent on December 12, 2017 and came into force on April 3, 2018.

End to End Development Application Review

On January 31, 2017, City Council adopted Item PG17.4, as amended, and recommendations contained in a report dated January 6, 2017 from the Deputy City Manager, Cluster B, the Deputy City Manager and Chief Financial Officer, the Deputy City Manager, Cluster A and the Interim City Solicitor, Legal Services on Additional Staffing Resources for Development Application Review. The five (5) temporary solicitor positions and the eight (8) temporary planner and one (1) temporary assistant planner positions recommended in the report were adopted by City Council as part of its 2017 Budget on February 15, 2017. The five temporary solicitors, consisting of four (4) Planning Law solicitors and one Real Estate Law solicitor, and the eight planners (8) and one (1) assistant planner positions, were all approved on a two year contract basis, to be funded from the City Planning Development Application Review Reserve Fund. The positions were filled and the contracts will end in March, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG17.4>

On September 7, 2017, Planning and Growth Management Committee adopted Item PG22.11 and the recommendation contained in a report dated August 23, 2017 from the Chief Transformation Officer, to approve the Terms of Reference and Work Plan as described in Attachment 1 to the report. The report proposes a work plan for an End to End Review of the Development Review Process. An outside consultant will be retained to support the End to End Review of the Development Review Process. This work will be led by a Working Group of key development review stakeholders, including: Deputy City Manager, Cluster B; Chief Planner and Executive Director, City Planning; City Solicitor; Chief Building Official and Executive Director, Toronto Building; General Manager, Transportation Services; General Manager, Solid Waste Management Services; General Manager, Parks, Forestry and Recreation; Chief Information Officer; General Manager, Economic Development and Culture; Chief Engineer and Executive Director, Engineering and Construction Services; Fire Chief and General Manager, Fire Services; General Manager, Toronto Water; and Director, Energy and Environment. The Working Group will be chaired by the Chief Transformation Officer.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG22.11>

COMMENTS

As described in previous staff reports, significant changes have been made to the land use planning system in Ontario. Previous staff reports provided detailed information on the legislative changes and transition regulation. This report will briefly touch upon

those changes, including the new legal tests for appeal decisions of City Council, but will focus on new rules and procedures governing matters under appeal and implementation of the new appeal system.

A chart prepared by the Ministry of Municipal Affairs and the Ministry of the Attorney General, entitled "Changes to the Land Use Planning and Appeal System - "Before and After" Implementation Table" is attached as Attachment 1 to this report for information purposes.

The Ontario Municipal Board (OMB) has been replaced with the new Local Planning Appeal Tribunal (LPAT). A number of the key changes brought about by the new legislation, regulations and the LPAT Rules of Practice and Procedure are highlighted below. These changes necessitate amendments to City processes and will create pressures on current staff resources for City Planning, the City Clerk's Office and Legal Services.

Implementation of the changes brought about by Bill 139 will also need to inform the Terms of Reference and Work Plan authorized by Planning and Growth Management Committee on September 7, 2017, (Item PG22.11) for the End to End Review of the Development Review Process.

A breakdown of the staffing resources required to meet the changes processed by Bill 139 is set-out below. The requested staffing resources are part of a multi-year plan. The initial increase in requested resources is intended to address the commencement of appeals in the post Bill 139 system where appeals will generally be heard within a legislated 10 month timeframe in a time-limited fashion and where the tremendous backlog of appeals that were received prior to the coming into force of Bill 139, will also need to be addressed. As we proceed forward with the new dual appeal system, there will need to be a re-assessment of resource needs in 2021 by staff and a report back to Council with respect to continuing staffing implications. Implications will include issues surrounding attrition planning and the interface with the End to End Development Application Review Process work plan.

Increase in Appeals Prior to Proclamation

As previously reported, likely as a consequence of the uncertainty surrounding the exact nature of the changes to the planning system and the transition rules that would govern, the City experienced a significant increase in appeals of Official Plan and Zoning By-law Amendment applications prior to Royal Assent of Bill 139 on December 12, 2017, and prior to Proclamation on April 3, 2018. In the period from May 16, 2017 (the date of first reading in the Provincial Legislature) to April 3, 2018, the City received 212 appeals, compared to 83 appeals for the previous year during the same period (May 16, 2016 to April 3, 2017). This represents an increase in appeals of approximately 164%.

Staff will continue to analyze the appeal of planning files trend over the course of the next few months to determine if there will be an increase in appeals to the LPAT based on Council non-decisions related to approvals/refusals of development applications, during the upcoming period of the City Council break.

Two Systems During Transition

The transition rules set out in Ontario Regulation 101/18 stipulate that certain matters commenced before December 12, 2017, and appealed by April 3, 2018 will continue and be disposed of under the *Ontario Municipal Board Act, 2017*. This means that all matters with a complete application made to the City prior to December 12, 2017 and appealed before April 3, 2018, will proceed under the old pre-Bill 139 appeal system.

There are a number of outstanding appeals that will continue under this old system and will likely take a number of years to be fully resolved, whether through settlements or contested hearings. Staff resources, and in particularly City Planning and Legal Services resources will be required to address these matters, including hearing preparation and hearing time, in addition to staff time to attempt to resolve these matters through mediation.

At the same time, complete applications made after December 12, 2017, and not appealed before April 3, 2018, will proceed under the *Local Planning Appeal Tribunal Act, 2017* in accordance with the new rules and subject to the new tests set out in the Planning Act, as amended. This means that for the foreseeable future there will be two appeal systems running concurrently.

New Rules for New System

In addition to changes to legislation and accompanying regulations, the Province has released Rules of Practice and Procedure that will govern proceedings at the Local Planning Appeal Tribunal (LPAT Rules). The LPAT Rules change the requirements for how appeals and the enhanced municipal record (as described below) are to be forwarded to the LPAT. This change will require the compilation and organization of all information and material submitted with the application, including consultant reports, as well as a paper copy of all written submissions either received or considered and documents prepared or filed in relation to the decision or non-decision that has been appealed.

In addition, the City Clerk is now responsible for providing a summary of the oral submissions which were received from the public at the statutory public meeting. A video and audio record of the public meeting where oral submissions are made is also now required to be forwarded to the LPAT.

The City Clerk will also be responsible for organizing the record in chronological order with an index outlining the title or a concise description of each entry, separated by tabs. All of the above will have to be sent to the LPAT within 15 days of the City Clerk receiving an appeal.

After a decision of Council is appealed and the City Clerk has forwarded the newly expanded record to the LPAT, the LPAT Rules provide for additional requirements affecting Legal Services and City Planning regarding the preparation of a Case Synopsis and Responding Appeal Record. These materials must be filed with the LPAT within very tight timelines. Once an Appeal Record is filed, the City will have 10 days to file an intention to respond and an additional 10 days to file a Responding Appeal

Record. The LPAT Rules require analysis, written legal argument, and submissions on the issues before the LPAT to be filed before a mandatory Case Management Conference for a majority of development application appeals.

New Timelines for Disposition of Appeals

Ontario Regulation 102/18 sets out new timelines for appeals to be heard and disposed of by the LPAT. For appeals of a decision or for a non-decision in respect of an official plan or zoning by-law, matters must be disposed of within ten (10) months from when the appeal is received and validated by the LPAT. Generally, all other matters, and the second appeal (as described below) of official plan and zoning by-law applications, must be disposed of within six (6) months from being received and validated by the LPAT.

These timelines can be paused in some instances but will have the effect of prioritizing matters appealed under the new rules and in the new system; effectively delaying resolution of appeals in the old system.

New Test and Changes to City Processes

The majority of amendments made through Bill 139 pertain to the appeal process. Under the new system Council decisions on most planning applications may only be appealed on the basis that Council's decision is not consistent with the Provincial Policy Statement and is not in conformity, or does not conflict with, relevant Provincial Plans. In the City's case this will most often be the Growth Plan for the Greater Golden Horseshoe, 2017 (the Growth Plan). In the case of a zoning by-law amendment, the decision of Council to adopt or refuse an application must also conform to the City's Official Plan, and on joint applications, the applicant must show how the existing zoning or official plan provisions are not in conformity with the City's Official Plan.

The new tests for appeal and the new rules pertaining to the filing of an enhanced municipal record will result in more emphasis being placed on the municipal decision making process and the decision itself. City Planning Staff Report templates have been amended to reflect the changes made by Bill 139. One of the key changes is the provision of links to all background studies, reports and comments for City Councillors to review. The new rules also require a very fulsome report record which will form the basis for Council's consideration of the matter. This will have an impact on City Planning resources as reports will now need to be more robust and address the key components of conformity of the application with provincial policies and plans.

90 Days to Reconsider

If on appeal, the LPAT finds that Council's decision does not pass the new test, the LPAT will, in a written decision, set out its specific findings and may, but is not obliged to, identify one or more options available to Council. The City is then given the opportunity, within 90 days, to make a new decision based on the decision on the appeal before the LPAT.

When reconsidering a planning application returned by the LPAT, the City will need to reassess the application, provide notice of a public meeting, hold the public meeting and issue a new decision. This will all have to be achieved in the 90 day timeframe. Staff will need to prioritize these applications in order to meet the legislated timelines.

Resource Implications

The enhanced municipal record requirements coupled with an emphasis on written proceedings and early filing dates will change the way the City Clerk, Legal Services and City Planning carry out their respective roles. At the same time, however, matters under the old appeal system will continue, including oral de novo hearings, until the final disposition of those matters. In order to meet all of these obligations, the City will require additional staff resources. These are set out below by Division.

City Clerk's Office

The changes in Bill 139 will also have a material impact on the City Clerk's Office. The changes impose new duties upon the City Clerk, including some previously performed by the OMB.

As outlined above, under the new LPAT Rules, the City Clerk's role in receiving appeals and organizing the Municipal Record will be significantly expanded. The Clerk is now tasked with organizing and providing a tabulated paper and electronic appeal record to the Tribunal and electronic copies to appellants. The LPAT Rules require summaries of all oral submissions along with video and audio of the statutory public meeting where the matters were considered and depositions heard. The Clerk is expected to have a paper copy of the Municipal Record available for inspection by any person. There will be additional work and additional notices costs associated with the 90-day reconsideration provision of the Act.

Staffing Request:

In order to carry out these additional duties, the City Clerk's Office requires additional resources. It proposes to establish two new positions to serve as a registrar and assistant registrar of appeals. These two positions would process appeals made for decisions originating from public hearings held across five bodies (i.e. the four Community Councils and the Planning and Growth Management Committee) and ultimately decided upon by City Council.

Legal Services

A number of factors will necessitate that Legal Services increase its staffing complement by two Solicitors, in addition to making five contract positions permanent, as follows:

Increased Volume of Appeals Under the Old Appeal System

- There will be an increase in hearings under the old system given the volume of appeals made prior to Bill 139 being brought into full force and it is anticipated that those hearings will continue into the foreseeable future;
- Bill 139 prompted a 164% increase in appeals. It is anticipated that it may take upwards of 3 to 5 years to clear the existing appeals under the old system.

Commencement of Appeals Under the New Appeal System and Related Matters

- At the same time as the hearings under the old system are continuing, appeals under the new LPAT system are beginning;
- The LPAT Rules place an emphasis on legal writing and argument for appeals that must be heard within a ten month timeframe. Significant legal resources will be required in order to meet deadlines under this new system while still devoting appropriate resources to hearings under the old system;
- Under the new LPAT system, full hearings will continue to be held following an appeal of a decision of Council after the LPAT has remitted the decision back to Council to make a new decision, if that new decision is also appealed;
- On-going education and training of staff with respect to the new system is anticipated by Legal Services; and
- Increased legal advice to Committees and Council is anticipated with respect to the new appeal system.

Increased Involvement in the Development Review Process by Legal Staff

- There has been a trend in recent years to involve Legal Services early in the development review process, particularly in complex in-fill projects. This requires extra time to be spent by lawyers but helps to identify issues early and better informs applicants in finalizing their applications;
- There is no anticipated reduction in workload elsewhere in the system; and
- Current workloads are such that there is not adequate time to complete the growing number of complex legal agreements associated with the approval of development applications in a timely manner.

Legal Staff Participation in the Implementation of Other Important Provincial Initiatives

- Other Provincial initiatives, such as the introduction of Inclusionary Zoning will require additional Legal Services staff time, to implement.

Succession Planning

From a succession planning perspective, there are a number of senior Planning lawyers who are either currently, or will shortly be, eligible to retire. Consequently, it is important to train and retain lawyers experienced in both the old planning and appeal system and the new planning and appeal system. As noted in the Decision History section of this report five temporary solicitor positions, consisting of four Planning Law lawyers and one Real Estate lawyer, were approved on a two year contract basis in the 2017

Budget. Those positions will end in March, 2019. It is important during this time of change that Legal Services retain its current staff of experienced lawyers, involved in development applications, by making the five current contract positions permanent positions.

Increase in Overtime

A review of the overtime hours of Planning lawyers over the last three years justifies two to three additional full-time positions. In 2017, for example, the full-time Planning lawyers worked 6,346 hours of overtime, which is the equivalent of 3.6 full-time positions. The trend to increased overtime is expected to continue into 2018 and beyond given the implementation of Bill 139 and the other factors noted in this report. That trend is unsustainable from the perspective of employee wellness and the negative impact on work quality. Legal Services is requesting that Council increase Legal's complement by two permanent Solicitors.

Preparing for Legal Services Staffing Requirements in the Longer Term

Legal Services is anticipating that it will take between 3 and 5 years to fully understand the impact of Bill 139 on staffing requirements, both from the perspective of disposing of the appeals under the old system and the processing of applications and appeals under the new system. Legal Services will monitor staffing requirements throughout that period. Legal Services will provide an initial evaluation of its staffing needs as part of the End-to-End Review of the Development Review Process that Planning and Growth Committee has requested the Chief Transformation Officer to lead.

The End-to-End Review is expected to be reported out on in 2019. Legal Services will also report out in the first quarter of 2021 on the status of appeals under the old system and the processing of applications under the new system. That will be approximately the 3 year point into the implementation of the new system under Bill 139 and the 3 year point in resolving appeals under the old system. Attrition strategies within the Planning and Administrative Tribunal Law Section of Legal Services will be considered both at the time of the End-to-End Review and in the 2021 report to off-set any decrease in workloads. Similarly, Legal Services will report out in the first quarter of 2023 which will be the five year anniversary of the new system. This report recommends that the City Solicitor report out on staffing in accordance with the time frame noted above.

The next four year review of the Development Application Fees will commence in 2019. The Development Application Fees are designed to achieve recovery of the costs to the City of processing development applications. This report recommends that the cost of the resources need to implement Bill 139 be considered for in the 2019 review of the Development Application Fees.

Staffing Request

In summary, in order to respond to the increase in appeals, effectively represent the City at Hearings and meet all required deadlines under the new LPAT Rules, Legal Services is requesting that five (5) existing contract lawyer positions be made

permanent and two (2) additional permanent lawyer and one (1) permanent Legal Assistant positions be added to its complement.

City Planning

The increased volume of planning application appeals that have resulted from the enactment of the Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139) and its associated regulations and the impact on service delivery of the implementation of the new legislated requirements of the Act, will have an impact on the Division's ability to maintain (or improve) its service levels. Additional planning staff resources will be required to concurrently manage two appeal processes put into place by Bill 139 and to meet the new timelines established through Bill139.

Increased Volume of Appeals

The volume of planning application appeals made prior to Bill 139 being brought into full force (i.e. the 212 appealed files compared to 83 appeals for the previous year during the same period (May 16, 2016 to April 3, 2017), has resulted in a significant increase in hearings under the former appeal system. These appeals will continue into the foreseeable future to be adjudicated under the former appeal rules until all appealed matters are concluded. These appeals may also result in discussions with the parties in an effort to determine if a settlement is a supportable outcome in advance of a hearing. However, either outcomes, be they hearings or settlements prior to full hearings, will require additional staff resources, to manage the volume of hearings and/or settlement discussions.

Managing the Dual Appeal Process

The assessment of planning applications under the new system will require a detailed analysis of applications under Bill 139 to ensure that Council considers the application's merits in terms of consistency and conformity with provincial policies and plans.

Planning application appeals under the new LPAT system have begun. The new LPAT rules place a greater emphasis on written argument to be provided by legal and planning staff within an expedited hearing timeframe. Under the new appeal system, full hearings will be held following an appeal of a decision of Council in the event that the LPAT has remitted the decision back to Council to make a new decision. If this is the case, participation from planning staff able to represent City Planning interests and City Council policies in an informed, consistent and clear manner, will be required.

The new expedited LPAT timelines will have the effect of prioritizing matters appealed under the new rules and in the new system; potentially delaying resolution of appeals subject to the old system, unless additional resources are provided to deal with these former system appeals.

The increased complexity associated with tracking, co-ordinating and scheduling appeals relating to both the old and new appeal systems, will entail the need to provide overall co-ordination for the appeal process.

Impact of Bill 139 on End to End Development Application Review

The End to End Review of the Development Application Process currently underway will need to incorporate the Bill 139 implementation lens as the overall goal of the Review is to examine opportunities for improvement with respect to the development review process that are aligned with the City's desired development review process outcomes.

Among the goals of the End to End Review that are affected by Bill 139 include:

- The development review process: activity steps, hand-offs, inputs, outputs, decision steps, approval steps, Standard Operating Procedures (SOPs), pre and post process steps, etc.;
- How the City interacts with and incorporates the perspective of all key stakeholder groups (applicants, residents, Councillors, etc.) with respect to the development review process;
- Potential technology solutions that will enable a streamlined process, management of KPIs and timely access to information for commenting partners, applicants and the public, including a review of the appropriateness and workability of the current development application information and tracking system (IBMS); and
- The degree to which staff resources/expertise are being utilized appropriately and how staff expertise gaps are identified and addressed.

Impact on Key Performance Indicators

The volume of appeals and concurrent management of dual appeal processes and new requirements of Bill 139 to have municipalities provide an enhanced municipal record, to have municipal staff participate in mandatory mediation before hearings, and also contribute more detailed written evidence and materials for the LPAT, under expedited timelines, will negatively impact the achievement of the Division's Key Performance Indicators in the absence of additional resources identified to address these new impacts.

The benefits of allocating additional staff resources to Legal Services and City Planning Division, as an outcome of the adoption of the January 6, 2017 Report (PG17.4) entitled "Additional Staffing Resources for Development Application Review - Recommendation Report", by City Council, to review increased volumes of development applications, will be compromised without consideration being given to the hiring of additional planning staff in light of these new changes brought into effect in 2018.

Current workloads do not provide sufficient time to deal more comprehensively with providing input for appeals of the growing number of complex planning applications, in a pre-emptive, strategic and timely manner. More time is required to focus on the review of these applications as is the need to reduce pressure for overtime.

Staff Training

Time and resources will need to be set-aside for education and training of all affected City Planning staff in a timely manner with respect to changes to land use planning and appeal practices brought about by Bill 139 in order to fully benefit from the changes.

City Planning staff will need to be prepared to provide increased levels of planning advice with reference to the new appeal system to other professional staff, and to Standing Committees and Council, until the changes brought about by the new appeal system are fully implemented and integrated into municipal planning practice.

Staffing Request:

In order to effectively respond to the increase in appeals and to effectively represent the City at hearings and meet all required deadlines under the new LPAT rules, City Planning is requesting approval to hire a total of nine (9) temporary resources at an incremental cost of \$ 0.402 million in 2018 and \$0.717 million in 2019, to be fully funded by the City Planning Development Application Review Reserve Fund. These additional staffing positions will enable the Division to effectively respond to the increase in appeal activity, better manage the demands placed on staff to deal with implementing procedures and protocols for processing development applications under the dual appeal system into the foreseeable future and expedite effective and proactive processing of the increased volume of appeal activity.

Expediting Implementation of Inclusionary Zoning

On April 11, 2018, the, Minister of Housing, announced the enactment of a regulation to implement inclusionary zoning. Inclusionary zoning is a planning tool that will enable the City to require developers to include affordable housing in new private residential developments. To utilize this planning tool, work needs to be undertaken by the City before the City is in a position to enact an inclusionary zoning by-law. Included in the work to be undertaken in advance, is preparation of the following: an assessment report to analyze housing need, demand and supply, and financial impacts; and development of draft and final official plan policies. A full consultation and engagement process will also need to be advanced as with any planning framework.

Approval of inclusionary housing policies by the Minister of Housing and Council adoption of the implementing zoning by-law, are sheltered from appeal to the LPAT through Bill 7, the *Promoting Affordable Housing Act, 2016*. Having affordable housing policies and a by-law in place requiring the inclusion of affordable housing as part of the development approval process, will remove the need to adjudicate this matter on an application by application basis before the LPAT.

Staff are currently developing the Inclusionary Zoning Work Program for Council's consideration and will address the need for additional resources as part of the Division's 2019 Budget submission.

Adjudicating Appeals Based on Growth Plan Conformity

Ascertaining conformity with the Growth Plan is a key consideration of the new land use planning appeal system introduced by Bill 139. The LPAT land use planning appeal process encourages municipalities to undertake their Municipal Comprehensive Review (MCR) work in an expedited fashion by legislating that appeals of most planning matters will initially be adjudicated based on whether they are consistent with provincial policies and conform with provincial plans.

The LPAT functions more as a true appeals body and the new appeal process is subject to new tests. For those Official Plans (OPs) and Official Plan Amendments (OPAs) not sheltered from appeal by Bill 139, and for Zoning By-law (ZBL) and Zoning By-law Amendment (ZBLA) appeals, the LPAT will only allow an appeal of a Council decision if the decision does not meet new "tests" relating to consistency with provincial policies, conformity with provincial plans, and in the case of privately initiated ZBL and ZBLA appeals, conformity with the municipal Official Plan. If the LPAT finds that Council's decision did not result in a decision that met the required tests, the LPAT will be required to return the matter to the municipality with written reasons, instead of replacing Council's decision with its own. Council will be provided with 90 days to make a new decision on the application and the LPAT retains the authority to make a final decision on matters only when, on a second appeal, Council's subsequent decision still fails to follow provincial policies and plans.

Ensuring Official Plan Conformity with the Growth Plan

As part of the 2019 City budget process, City Planning had documented and projected an increase in its proactive city building initiatives work, including significant Area Studies and city-wide policy initiatives. The implementation of Bill 139 will now require additional major policy work, particularly in terms of the legislated requirement to undertake a MCR to ensure municipal Official Plan conformity with Provincial Plans (and in particular the Growth Plan).

The Growth Plan sets out a number of requirements that will impact City Planning Division's 2019 - 2022 work program. A significant amount of work will need to be undertaken to address the legislated requirement to bring the Official Plan into conformity with the Growth Plan and to advance the requirement zoning by-law implementation frameworks.

In particular, the Growth Plan (2017) contains policies which require municipalities to delineate in their Official Plans geographic areas around transit stations in which to plan for transit-supportive densities for potential transit users that are within walking distance of the station. Municipal Transit Station Areas (the MTSAs) must be delineated through a MCR. Policies which support the MTSA targets may be included through Secondary Plans, SASPs, or other planning documents. City Planning staff have undertaken a preliminary existing conditions analysis for the future MTSAs. There are over 129 potential MTSAs in the City alone, over half of the potential MTSAs in the whole Greater Golden Horseshoe region covered by the Growth Plan.

The City's MCR, as per the Growth Plan requirements, must be a single OPA, initiated under Section 26 of the *Planning Act*, which encompasses all required aspects of the MCR process including employment review, MTSAs, major retail, Urban Growth Centre boundary changes, etc. This means that all conformity work will need to be determined, undertaken by planning staff concurrently and completed by 2022. In order to meet Growth Plan timelines, the Division will be undertaking an unprecedented amount of conformity work that will have an impact on the Division's ability to meet its service level targets. Timely completion of this work is vital in order for the City to make effective use of the legislative amendments to the land use planning approvals and appeal process

put in place by Bill 139. Staff are currently developing the MCR work program for Council's consideration and will address the need for additional resources as part of the 2019 Budget submission.

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ATTACHMENTS

Attachment 1: Changes to the Land Use Planning and Appeal System - "Before and After" Implementation Table