Clause 19 in Report No. 10 of Committee of the Whole was adopted by the Council of The Regional Municipality of York at its meeting held on May 21, 2015 with the following amendments:

Amendment to Recommendation 3 as follows:

3. The Regional Clerk circulate this report to all nine municipalities, the Association of Municipalities of Ontario, the Municipal Finance Officers' Association and the Development Charges Working Group Steering Committee.

Amendment to Attachment 1 as follows:

Addition of item 24 to the table which addresses the following:

"the Province also consider possible legislative changes to the Planning Act that would allow approval authorities to place time limits on zoning approval, similar to those lapsing provisions already available on plans of subdivision"

19
Proposed Amendments to the Planning Act and Development Charges Act under Bill 73

Committee of the Whole recommends adoption of the following recommendations contained in the report dated April 30, 2015 from the Commissioner of Finance, Chief Planner and Commissioner of Corporate Services:

1. Recommendations

It is recommended that:

1. Council endorse the contents of this report and Attachments 1 and 2 as York Region's comments on proposed amendments to the *Planning Act* and *Development Charges Act* identified in Bill 73.

2. The Regional Clerk submit this report and attachments to the Ministry of Municipal Affairs and Housing as York Region's comments to EBR Posting 012-3651.

3. The Regional Clerk circulate this report to all nine local municipalities.

2. Purpose

The purpose of this report is to seek Council endorsement of recommendations made in response to the proposed legislative amendments under Bill 73 to the *Planning Act* and *Development Charges Act*. Bill 73 is the outcome of Provincial consultation on the Land Use Planning and Appeal and Development Charges Systems review that was undertaken by the Ministry of Municipal Affairs and Housing (MMAH) in January 2014.

3. Background

York Region commented on the Provincial Land Use Planning and Appeal Systems Review consultation process in January 2014

Between October 2013 and January 2014, the MMAH sought input on the Land Use Planning and Appeal and Development Charges systems, focusing on what changes were needed to improve the system. York Region provided a written submission to MMAH on January 9, 2014, with a corresponding joint staff report between Finance and Planning.

The Regional response answered specific Provincial questions, broken down by various themes that MMAH consulted on. These themes included:

- predictability and accountability in the planning and appeal process
- greater municipal leadership in local land use planning decisions
- better engaging citizens in the local planning process
- alignment of land use planning and infrastructure decisions
- recovering the infrastructure cost of growth from growth
- prescriptive versus permissive legislation
- transparency and accountability
- strengthening development charges as a broader policy tool

These themes touched on both the *Planning Act* and the *Development Charges Act,* resulting in a joint response from the Region's Finance Department and Long Range Planning.

With respect to the *Development Charges Act*, the Region noted a number of areas and issues that should be addressed and/or amended including:

- growth-related capital costs for solid waste management facilities, hospitals and municipal administrative buildings be fully recoverable through DCs;
- the 10-year historic average service level cap be replaced with a forward looking service standard for transit and other services;

- the 10-year planning horizon for transit be removed;
- the 10 percent statutory discount be removed for all services;
- the ability to choose between an area-specific DCs rate structure or municipal-wide DCs rate structure;
- no additional reporting requirements; and
- a limitation of Ontario Municipal Board (OMB) powers in section 16(4) of the *Development Charges Act*

The Province released Bill 73 – proposed *Smart Growth for Our Communities Act, 2015* that responds to previous consultation on the *Planning Act* and the *Development Charges Act*

On March 5, 2015, the Province released Bill 73 – the proposed *Smart Growth for Our Communities Act*, which aims to provide more resident involvement and set out clearer rules for land use planning in Ontario. Bill 73 also proposes to give municipalities more independence to make local planning decisions and make it easier to resolve disputes.

Bill 73 also contains several proposed changes to the *Development Charges Act,* including giving municipalities more opportunities to fund growth-related infrastructure such as transit and waste diversion. Bill 73 attempts to make the development charge regime more predictable, transparent and accountable.

York Region has undertaken a coordinated staff review of Bill 73 as it relates to previous comments made in January 2014. Furthermore, the Region has met with local municipalities to seek their input and provide their suggestions.

4. Analysis and Options

Proposed Changes to the *Planning Act*

Proposed amendments to the *Planning Act* are responsive to comments York Region identified through the January 2014 consultation process

A number of York Region comments from January 2014 would be addressed with approval of Bill 73. Recommended York Region responses to the proposed *Planning Act* amendments identified through Bill 73 are detailed in Attachment 1. A summary of key proposed amendments with the recommended Regional response is provided below.

Proposed changes to limit appeals to the Ontario Municipal Board are positive but do not go far enough

The Bill proposes to remove the ability to appeal official plans/official plan amendments (OPA) that implement certain provincially approved matters. The intent of the proposed amendments in this regard is positive, as appeals of this nature frustrate municipal efforts to implement Provincial planning legislation and policy. Unfortunately, the Bill only proposes to remove the ability to appeal a part of an official plan that identifies an area as being within the boundary of:

- A vulnerable area as defined in the *Clean Water Act, 2006*,
- The Lake Simcoe watershed as defined in the *Lake Simcoe Protection Act, 2008*,
- The Greenbelt Area, Protected Countryside or Specialty Crop Area per the *Greenbelt Act, 2005* or *Greenbelt Plan*, or
- The *Oak Ridges Moraine Conservation Plan* area as defined within that Plan.

It is noted that the 'no appeal' provision only relates to certain boundaries within the noted Acts and Plans. It is recommended that the Province extend this 'no appeal' provision to all portions of an official plan for the purposes of conformity with the above referenced Acts and Plans, including applicable policies.

No appeal provisions related to *Growth Plan* conformity should be expanded

There is also no appeal allowed on part of an upper- or single-tier official plan that identifies forecasted population and employment growth as set out in the *Growth Plan*. As written, this amendment only appears to prohibit appeals of the *Growth Plan* forecasts for the Region, but would allow for appeals to how the Region allocates that growth to local municipalities. It is recommended that the Province revise the proposed amendments to prohibit appeals "on part of an upper or single-tier official plan that identifies and allocates forecasted population and employment growth pursuant to the *Growth Plan for the Greater Golden Horseshoe"*.

Additionally, in the case of a lower-tier municipal official plan that identifies a boundary for a settlement area that reflects the boundary of the upper-tier municipality's official plan, again, no appeals are allowed. However, an upper or single-tier municipal urban boundary expansion could still be appealed. The Region recommends that Bill 73 preclude appeals of a settlement boundary in upper-tier plans that have been approved by the Minister.

Bill 73 proposes to amend the *Planning Act* to prohibit whole plan, or "global", appeals. The Region commends the Province in this regard.

The Region supports proposed changes to encourage mediation and other alternative dispute resolution techniques

Another change proposed by Bill 73 is that municipalities would be permitted to use mediation, conciliation and other dispute resolution techniques, before being required to forward appeals to the OMB. When a municipality gives notice of intent to use dispute resolution techniques, the time for submitting the record to the OMB would be extended to 75 days. The Region supports this opportunity for early resolution of potential appeals.

Non-decision appeals will no longer be available for lower-tier official plans that do not conform to upper-tier official plans, until the conformity is addressed

Under the Bill 73 amendments, an approval authority would be explicitly prohibited from approving any part of a lower-tier official plan if the plan or any part of it if it does not conform to the upper-tier plan. Specifically, under the proposed s. 17(34.1), an approval authority shall not approve the new official plan of a lower-tier municipality under s.17 (34) of the *Planning Act* if it does not conform with the upper-tier municipality's official plan. In addition, pursuant to proposed s. 17(40.2), if the approval authority states that any part of the lower-tier municipality's plan does not conform, appeals for non-decision are not available until the non-conformity is addressed. The Region supports the intent of these proposed amendments, however, it is recommended that the language of the proposed s. 17(40.4) be clarified regarding the mechanism and timeframe for how the non-conformity is addressed.

In order to place greater priority on local decision making, the proposed amendments restrict private Official Plan Amendment applications on new official plans for 2 years

Official plans are sophisticated documents that involve significant stakeholder engagement and collaboration. Bill 73 proposes to restrict privately-initiated official plan amendment applications for two years following a new official plan coming into effect. While the Region supports this proposed change, restricting official plan amendment applications for a 2-year period should also apply to official plan updates resulting from a five-year official plan review or conformity update under s. 26 of the *Planning Act*.

In the event of an appeal, the Ontario Municipal Board will be required to have regard to the information and material that the municipal council received in relation to that matter

Currently, when a municipal decision is appealed, the OMB is required to have regard to decisions of municipal councils and approval authorities and any supporting information and material that the approval authority considered in making the decision. The Bill 73 amendments would require that for non-decision appeals the OMB have regard to the information and material that the municipal council or approval authority received in relation to the matter, even if a decision was not made and the matter is before the OMB for lack of decision by the municipality. Although a subtle change, the proposed modification recognizes the value of public input, even in isolation of a municipal decision on the matter.

In addition, the proposed amendments clarify that "information and material" includes written and oral submissions from the public relating to the planning matter.

Local decision making will be improved with the opportunity to extend the current 180-day decision making timeframe

York Region had previously commented that municipalities are struggling to make planning decisions within the 180-day timeframe prescribed in the *Planning Act*. Six months, or 180 days, to review an official plan amendment application or a large complex development proposal is not sufficient. Processing time to allow for all agency input to be gathered and responded to and a fulsome public participation process to be undertaken often extends well beyond 180 days. Furthermore, consideration of an entirely new official plan is subject to the same decision time frame as a development application or OPA. In this regard, the Region had requested that the 180-day decision timeframe be extended to 365 days. The Region also requested that OPA applications not be subject to non-decision appeals at all.

While the Region’s requests have not been fully addressed, Bill 73 responds by providing the ability to extend the 180-day time frame for up to an additional 90-days if written notice of the extension is provided prior to the expiry of the180-day period. However, an applicant, municipality or approval authority who gave or received a notice extending the period may terminate the extension at any time by another written notice. The Region recommends that only a municipality or approval authority have the ability to make or terminate an extension to the 180-day period. In the alternative, there should be no ability to cancel an extension to the 180-day period, and the notice that provides the longest extension should govern (instead of the notice that is given first).

Lastly, the Region had expressed concern that there is no deadline for appeals for non-decision within the 180-day time frame. That is, once an application has been appealed for non-decision, additional appeals can continue to be filed with no 'cut-off' date imposed. The proposed s. 17(41.1) would permit the approval authority, upon receiving a notice of appeal under s. 17(40), to give notice that no further appeals are permitted as of 21 days after the date of the notice. The Region commends the Province for this significant proposed amendment.

Refinements to the review date for Provincial policy statements will allow for better coordination of municipal official plan updates with updated Provincial planning documents

York Region previously commented that municipal plans have been in an almost constant state of review because of the number of amendments required to ensure conformity with Provincial plans and updates to those plans. This continues to be a strain on municipal resources and has impacted the ability of many municipalities to keep planning documents up to date. Currently, the Province is undertaking a coordinated 2015 review of the *Growth Plan*, *Greenbelt Plan*, *Oak Ridges Moraine Conservation Plan* and *Niagara Escarpment Plan*. The Region is hopeful this review will address consistency and overlap between these plans and reduce the frequency of amendments to municipal planning documents.

Bill 73 proposes to extend the review period of policy statements issued under s. 3 (1) of the *Planning Act*, such as the Provincial Policy Statement, to 10-year intervals rather every 5-years. The Region has no objection to this review extension. This revision schedule complements the proposed change under s.26 (1) that would require a municipality to review a new official plan 10 years after the plan comes into force and at 5-year intervals thereafter to ensure it conforms with Provincial plans, has regard to matters of Provincial interest and is consistent with policy statements issued under the Act. An explicit requirement in s. 26 (1) to revise an official plan if it contains policies dealing with areas of employment, including policies dealing with the removal of employment lands to ensure that those policies are confirmed or amended is proposed to be removed from the *Planning Act*. The Region supports both these changes, as the extended review period may help align the timing for municipalities to undertake their Provincial conformity exercises.

Bill 73 proposes that public consultation requirements be outlined in policy and be more transparent

Currently, it is not mandatory to include policies in official plans that outline measures and procedures for informing and obtaining the views of the public in respect of certain planning documents. Bill 73 proposes to make the inclusion of such policies mandatory in respect of proposed OPAs, proposed zoning by-laws,

proposed plans of subdivision, proposed consents, as well as other matters that may be prescribed by regulation. Bill 73 also proposes:

- that decision makers explain the effect of written and oral submissions on their decisions, and

- that planning advisory committees be mandatory for upper and single-tier municipalities in Southern Ontario

The Region is a strong proponent of comprehensive consultation and supports the recommended increase in accountability for meaningful public engagement subject to the following modifications/points of clarification:

- The reference to oral submissions be removed; staff is concerned about potential negative implications on both the commenter and the Region in having the municipality responsible for documenting oral submissions, given that not all municipalities are equipped to scribe and capture oral submissions. Exceptions would be made in the event an oral submission was required to address matters of accessibility in accordance with the *Accessibility for Ontarians with Disabilities Act*.

- Confirmation that Terms of Reference which establish the role of the Planning Advisory Committees can be developed at the municipal level.

York Region previously commented that the *Planning Act* should be updated to allow the use of electronic notices in addition to or instead of newspaper advertisements. Alternative measures for informing and obtaining the views of the public are currently permitted in connection with proposed OPAs and zoning by-laws. The Bill proposes to expand these provisions to include plans of subdivision and consents.

There are several comments that York Region included in our response to the Land Use Planning and Appeal System Review that have not been addressed in Bill 73

The following are specific comments that the Region provided to the Province in January 2014 that remain outstanding and should be included in Bill 73:

- Local municipalities rely on the pre-consultation process to scope the nature of each application and determine the appropriate studies for a complete application. Since the process of pre-consultation and complete application goes hand in hand, the Region had previously suggested that failure to deem an application “complete” should not be appealable. We note this has not been addressed in Bill 73, but would encourage the Province to consider making this change.

- The Region recognizes that changes were made to the Municipal Class Environmental Assessment document, whereby a secondary plan process could be used to credit Phases 1 and 2 of the Municipal Class EA process. This is a first step to streamlining the infrastructure planning and approval processes under the *Planning Act* and *Environmental Assessment Act*. The *Planning Act* should also explicitly recognize master plans, since the requirements of infrastructure master plans are often duplicated through the secondary plan process. This would help streamline the process and eliminate duplication. The Province should consider reflecting this change in the *Planning Act*.

Proposed Changes to the *Development Charges Act*

Some positive amendments are being proposed to the *Development Charges Act*, consistent with York Region's comments in response to the January 2014 review

York Region's comments on the proposed *Development Charges Act* amendments identified through Bill 73 are detailed in Attachment 2. While there are many proposed amendments, the most important fall under two broad categories: cost recovery and increased transparency:

Cost Recovery

(a) striking the list of ineligible services in section 2(4) and proposing to include a list in the regulations;
(b) removal of the 10 per cent statutory reduction for transit;
(c) replacing backward – looking service level standards with the use of forward looking, or planned levels of services, for services to be prescribed in the regulations;
(d) new powers for Province to regulate area-rated rates; and
(e) timing of DC collections to be clarified for one building developments.

Increased Transparency

(a) enhanced reporting requirements;
(b) additional requirements for DC Background studies; and
(c) an end to 'voluntary' payment agreements.

The list of ineligible services is to be moved from the legislation to the regulations and waste diversion will be removed from the list

Section 2 (4) of the Act is repealed and re-written to direct that ineligible services will be identified within the regulations, rather than the current approach where they are listed both within the Act and the regulations.

Provincial guidance indicates that waste diversion, a component of waste management, will be removed from the list of ineligible services. More specifically, Provincial guidance indicates that any service not falling under the auspices of 'landfills' or 'incineration' will become eligible for inclusion in the calculation of DC rates. The regulations are not expected to narrowly define waste diversion, allowing for greater cost recapture in the future as new technologies come online to divert waste (an example provided is oil separation from consumer products). Additionally, there will likely be a requirement for separate background studies or additional content within the background studies to clarify service standards and their relationship to growth.

Regional staff recommends that the Province consider further amendments to make all growth-related costs for waste management recoverable from development charges. In addition, Regional staff recommends that hospitals and municipal administrative buildings become 'eligible services' for development charge purposes.

Transit costs as it will no longer be subject to the 10 per cent statutory reduction

Under the current *Development Charges Act*, transit is a service for which there is a statutory reduction of 10 per cent applied to the cost recovery. The proposed amendment would add transit services to the list of services for which no discount is applied.

The list of services that would still have a 10 per cent reduction and 10-year planning horizon applying to them includes:

(a) EMS;
(b) Long-term Care;
(c) Social Housing: and
(d) Growth Studies.

It was hoped that transit services would also no longer be subject to the ten-year planning horizon. However, this does not appear to be the case, due to the inclusion of subsection 5.2(3), which says the estimate for a prescribed service shall not exceed the planned level of service over the 10-year period following

the background study. The Region recommends that 5.2(3) be amended to refer to, at the very minimum, a 20-year planning period.

Transit development charges can now be levied based on the planned level of service, rather than past levels of service

Under the current legislation, the estimate of DC-recoverable capital costs must not include an increase that would result in the level of service exceeding the average level of that service provided in the municipality over the 10-year period immediately preceding the preparation of the background study.

The proposed amendments would allow municipalities to use a forward-looking service level calculation to determine DC-recoverable capital costs for prescribed services. The prescribed services and the methodology for calculating planned level of service will be set out in the regulations. Based on discussions with MMAH, the forward-looking service level is currently only expected to apply to transit. As a result of this, DC background studies will have to include analysis to justify a prospective relationship between growth and the capital costs of projects.

The Province is giving itself the power to prescribe area-rated development charges

Currently, a municipality may pass different development charge bylaws for different parts of a municipality at its discretion (e.g.; Nobleton). Bill 73 proposes to provide the Province with the power to prescribe by regulation, the areas, services and municipalities where area-rated development charge bylaws must apply.

The amendments, if passed, will also require municipalities to consider the use of area-rated development charges and by-laws in their DC background studies, unless the municipality is already required to pass an area rated development charge bylaw pursuant to the regulations.

Regional staff agrees that municipalities should retain the flexibility to choose area-specific DC rates, if area-specific rates meet their needs, but staff are not supportive of the Province having the power to impose area-specific rates.

Development charges are to be collected upon issuance of the first permit for buildings requiring multiple permits

Under the current *Development Charges Act,* a development charge is payable for a development either upon a building permit being issued for the development, or in the case of subdivisions, hard services DCs are payable upon the ratification of a subdivision agreement.

The proposed amendment requires payment of DCs upon the issuance of the first permit on developments of one building requiring more than one permit. An example is high rise buildings that require excavation permits, in addition to permits to construct. This amendment is not envisioned to apply to subdivisions.

However, according to Provincial officials, the original rationale behind this section was as a 'lock-in' of rates provision and as such should not read as 'payable'. Instead it was envisioned that this section would mean that rates would be locked in when the first building permit being issued'. This clarification may be one of the issues addressed by the steering committee.

This change will also result in revenue losses for the Region, if developers are able to lock in lower rates by drawing excavation permits.

DC reserve reporting requirements will be strengthened and expanded

Bill 73 proposes to revise section 43(2), which governs the scope of the Treasurer's annual financial statement to the Ministry. In addition to including statements of the opening and closing balances of the reserve funds, and transactions relating to those balances, the Treasurer of a municipality will now be required to include:

(a) statements identifying all assets whose capital costs were funded under a development charge bylaw;
(b) statements identifying the manner in which any capital cost not funded under the bylaw was or will be funded; and
(c) a statement as to compliance with the new subsection 59.1, which prohibits 'voluntary' agreements.

In addition, the new subsection 43(2.1) requires the Treasurer's statement to be made available to the public (a policy the Region already has in place).

Asset management plans will be part of the DC Background Study

Bill 73 would require municipalities to prepare an asset management plan that demonstrates that all assets funded by DCs are financially sustainable over their lifecycle. This is in addition to the current requirement of "examining" the long term capital and operating costs required for each growth-related infrastructure service. The regulations may provide additional information to clarify the content of the asset management plan and the meaning of financial sustainability in this context.

The regulations also need to clarify the relationship between the asset management plans developed for master plans and other purposes and the asset management plan required for the background study.

An end to voluntary payment agreements between municipalities and developers

Under the proposed amendments, municipalities would not be permitted to impose, directly or indirectly, a charge related to a development or a requirement to construct a service related to development, except as permitted by this Act or another Act (subsection 59.1). The proposed amendments grant the Minister of Municipal Affairs and Housing investigative powers regarding compliance with this section of the Act and allow the Ministry to require a municipality to pay for the cost of a compliance investigation.

Despite the positive changes made, more can still be done in an effort to have growth truly pay for growth

Notwithstanding the positive changes aimed at achieving the guiding principle of 'growth paying for growth', there is still opportunity for further improvement. Areas not fully addressed by *Bill 73* include:

(a) elimination of the entire 'ineligible services' category and the full recovery of growth related capital costs through DCs (including making the burial of hydro lines an eligible service);
(b) elimination of the historic level service cap for all services, replacing it with forward looking service standard levels for all services, not just prescribed services;
(c) a planning horizon for transit services that is not restricted to ten years; and
(d) removal of the 10 per cent statutory discount for all services.

The powers of the OMB with respect to making rulings in favour of municipalities remain unchanged

Bill 73 did not address the Region's concerns regarding the powers of OMB. The OMB is prevented from issuing a ruling that would benefit a municipality (i.e., increases in DCs payable, remove or reduce exemptions). Consequently, appellants and municipalities bear different levels of risk before the OMB. It is the position of the Region that the Province should repeal section 16(4) of the Act, which limits the ability of the OMB to issue rulings that benefit municipalities.

The province is developing regulations at the same time as the legislative process is proceeding

Currently Bill 73 is awaiting second reading. The Province is establishing a steering committee to provide advice on the implementation of the proposed amendments. This committee plans to look at the following areas;

(a) the calculation of planned service levels for transit,
(b) the applicability of area rating,
(c) the inclusion of other 'ineligible services' as eligible for DCs, and
(d) the removal of other services, besides transit, from the 10 per cent discount.

It is expected that this committee will report back by December 2015. York Region is not expected to be invited to participate as the Region is part of AMO and MFOA. The Bill will take at least one year to be passed, with the regulations expected to be published simultaneously.

Link to key Council-approved plans

Improvements to the *Planning Act* and *Development Charges Act* support several objectives in York Region's 2015-2019 Strategic Plan including: "Optimizing critical infrastructure systems capacity"; Encouraging growth along Regional Centres and Corridors"; "Preserving green spaces"; "Ensuring optimal locations for business and employment growth are available", and "Ensuring a fiscally prudent and efficient Region".

Bill 73 also supports the "Liveable Cities and Complete Communities" and "Open and Responsive Government" theme areas in Vision 2051.

Lastly, the proposed legislative amendments in Bill 73 support a number of Regional Official Plan policy areas including but not limited to the "Economic Vitality", "Growth Management" and "Implementation" sections.

5. Financial Implications

There may become positive financial effects on all Ontario municipalities resulting from these proposed amendments to the *Planning Act* and the *Development Charges Act*.

Limiting OMB hearings would help alleviate the drain on municipal resources

York Region has spent more than $4 million defending the York Region Official Plan, 2010 at the OMB including associated appeals at the local level. Removing global appeals on new official plans and prohibiting appeals on certain Provincial conformity matters could prevent and/or reduce expenditures in the future.

DCs are a key funding source for the Region

In 2014, the Region collected $264.2 million in development charges. Based upon the 2015 – 2018 Budget, DCs will fund 45 per cent of the ten year capital budget.

6. Local Municipal Impact

Local municipalities were invited to comment through the Region. In general, there was consensus that most of the changes are positive, but that further measures would be beneficial. Bill 73 provides many improvements to streamline and provide greater certainty in the Land Use Planning and Appeal System and Development Charges Systems process that would benefit York Region and its local municipalities.

7. Conclusion

The Ministry of Municipal Affairs and Housing initiated proposed amendments to the *Planning Act* and *Development Charges Act* through Bill 73, the "*Smart Growth for our Communities Act*". If passed, the *Planning Act* changes in Bill 73 would limit official plan amendment applications and appeals, provide greater opportunities for public participation, and place more emphasis on local decisions. The Region commends the Province on these proposed amendments; however, in several instances they could be enhanced to further shelter municipalities from appeals to the OMB.

The proposed changes to the *Development Charges Act* are a positive step towards achieving the axiom of 'growth paying for growth'. Emphasizing increased cost recovery and increased transparency strikes a careful balance between stakeholder interests. Still more can be done, including limiting OMB powers, removing the 10 per cent statutory discount for all services and permitting 'planned' service level standards to be used.

For more information on this report, please contact Valerie Shuttleworth, Chief Planner, at ext. 71525, or Ed Hankins, Director, Treasury Office, at ext. 71644.

The Senior Management Group has reviewed this report.

April 30, 2015

Attachments (2)

YORK #6076340

Accessible formats or communication supports are available upon request

Summary of York Region's Comments on the Provincial Land Use Planning and Appeal System Review and Proposed Bill 73 *Planning Act* Amendments

Item No.	Regional Comments from January 2014 Consultation	Analysis of Bill 73 and Regional Recommendations
1.	The Province should work towards addressing consistency and overlap between key policy documents, including: *Provincial Policy Statement*, *Growth Plan for the Greater Golden Horseshoe*, *Greenbelt Plan*, *Oak Ridges Moraine Conservation Plan*, *Lake Simcoe Protection Plan*, *Clean Water Act*, Source Water Protection Plans, Metrolinx's *Big Move* and *Endangered Species Act*.	Partially addressed. On February 27, 2015 the Province announced that it would undertake a coordinated review of the *Growth Plan for the Greater Golden Horseshoe*, *Greenbelt Plan*, *Oak Ridges Moraine Conservation Plan* and *Niagara Escarpment Plan.* The commenting period for the first round of consultation ends on May 28, 2015. Draft amendments to the plans will be presented at a second set of public consultations later this year. The Region will be providing comments to the Province in response to this consultation on provincial plans.
2.	The Province should also work towards combining documents and/or coordinating plans and reviews to reduce the number of documents and the frequency of amendments to municipal planning documents.	Same as above.
3.	The Province should also consider providing guidance documents for interpreting policy to minimize error. Older, outdated guidance documents should clearly be withdrawn from use.	Not required to be addressed in Bill 73, as guidance documents are generally provided to supplement provincial policy and legislation.
4.	Official plans should only be amended at the time of the 5 year municipal comprehensive review; unless a conformity update is required by Provincial legislation. Additionally, site-specific, privately initiated official plan amendments should only be considered at the time of an upper-tier municipal comprehensive review.	Partially addressed. Bill 73 restricts privately-initiated OPA applications for 2 years, but only after a new official plan comes into effect. The 2 year limit on OPAs does not apply for amendments resulting from a 5-year official plan review or a conformity update. The Region recommends that the 2 year limit on private applications be applied to all official plans and amendments under section 26, including new official plans, 5-year review amendments and other provincial conformity amendments.

Attachment 1

5.	Limits on what can be appealed and when must be set to foster a more collaborative planning system in Ontario.	Partially addressed. Prohibits certain appeals related to population and employment forecast appeals, and urban expansion area appeals at the lower tier if the lower tier boundary reflects the boundary of the upper tier. With respect to population and employment forecasts, under Bill 73: • There is no appeal of part of an official plan that identifies forecasted population and employment growth as set out in the Growth Plan for the Greater Golden Horseshoe; and • For a lower tier official plan, there is no appeal of part of an official plan that identifies forecasted population and employment growth as allocated to the lower-tier municipality in the upper-tier's plan. With respect to urban boundary appeals: • There is no appeal of part of a lower-tier plan that identifies the boundary of an area of settlement to reflect the boundary set out in an upper-tier plan that has been approved by the Minister. The Region supports the direction of these amendments, however, it recommends that the Province revise the proposed amendments to prohibit appeals "on part of an upper or single-tier official plan that identifies and allocates forecasted population and employment growth pursuant to the *Growth Plan for the Greater Golden Horseshoe"*. The Region also recommends that Bill 73 preclude appeals of a settlement boundary in upper- tier plans that have been approved by the Minister. It may be useful to include this clarification in s.26, so that it is clear that conformity amendments related to population and employment forecasts are not subject to appeal.
6.	Improved information sharing and collaboration could be achieved by encouraging earlier and additional engagement through both formal and informal means.	Addressed. Under the proposed amendments, official plans are now required to include a description of measures and procedures for public input for official plans, zoning by-laws, plans of subdivision and

		consents.
7a.	Whole plan appeals should no longer be permitted.	Addressed. No more “global” appeals of official plans.
7b.	Where appeals are initiated, appellants should be required to identify the specific elements of the plan being disputed.	Bill 73 should also include amendments to require that the notice for the appeal set out the reasons for the appeal for each specific part of the plan to which the notice applies.
8.	Conformity amendments to official plans and zoning by-laws should not be subject to appeal at all.	As noted above, the Region recommends that the restrictions on appeals related to population and employment forecast should clarify that the allocation of *Growth Plan* forecasts in an official plan approved by the Minister is not subject to appeal. In addition, Bill 73 should preclude appeals of a settlement boundary in upper-tier plans that have been approved by the Minister. Additionally, appeals of official plans in connection with specified matters are not permitted. These matters include boundary areas within a vulnerable area, as defined in the *Clean Water Act;* the Lake Simcoe watershed, as defined in Section 2 of the *Lake Simcoe Protection Act;* the Greenbelt Area or Protected Countryside, as defined in the *Greenbelt Plan* and the *Oak Ridges Moraine Conservation Plan*.
9.	Timeframes for other amendment types or development proposals should be extended to 365 days.	Partially addressed. Appeals timeframes of a non-decision may be extended up to 90 days if written notice is given by a municipality, approval authority or applicant. However, the proposed s.17 (40.1) should be revised to provide that only a municipality or approval authority have ability to make or terminate an extension. In addition, under 17 (40.2) if an approval authority states, within 180 days of receiving the plan, that any part of the lower-tier municipality’s plan does not conform with the upper-tier plan, then appeals for non-decision are not available until the non-conformity is addressed. The

		Region supports the intent of this proposed amendment, however, it is recommended that the language of the proposed s. 17 (40.4) be clarified regarding the mechanism and timeframe for how the non-conformity is addressed.
10.	Official plan amendment applications should not be subject to non-decision appeals.	Partially addressed. Appeals for non-decisions of official plans within 180 days, would have some extensions under s.17 (40.1) and (40.2), including extension of up to 90 days if written notice is provided, and if an approval authority states a lower-tier official plan does not conform to the upper-tier plan.
11.	No additional consequences should be given to the municipality if no decision is made in the prescribed timeline.	Addressed. No additional consequences are being proposed.
12.	As-of-right zoning could be used to implement intensification areas that have been designated in official plans or secondary plans.	Not addressed. Recommend Province considers further amendments in Bill 73.
13.	It may be more appropriate that a local appeal body (rather than Ontario Municipal Board) hear appeals on minor variances and consents. The Province should consider developing resources to support municipalities in establishing and resourcing these bodies.	Not addressed.
14.	Municipalities should have discretion to implement pre-consultation processes that can be scoped based on the nature of the application.	Addressed in previous amendments to the *Planning Act*.
15.	It has been suggested that failure to deem an application "complete" should not be appealable.	Not addressed.
16.	Lower- tier municipalities should be required to undertake provincial conformity exercises one year after approval of the upper-tier conformity exercise.	Partially addressed. If the approval authority states that the lower-tier municipality's plan does not conform, appeals of a non-decision are not available until the non-conformity is addressed.
17.	To reduce the layers and complexity of planning documents, official plan documents could rest solely with the upper-tier municipality. Lower tier municipalities can	Not addressed.

	then focus on implementation through Secondary Plan exercises, zoning by-laws and urban design guidelines.	
18.	Citizen advisory groups for larger planning initiatives are sometimes effective, but legislation requiring them is not necessary.	Bill 73 makes an Advisory Committee mandatory for upper and single tier municipalities. The Region supports the proposal provided municipalities can establish the Terms of Reference for the role of the Planning Advisory Committees.
19.	Currently, the *Planning Act* regulates the wording used in statutory notices to advise the public of complete applications, public meetings and decisions. This language needs to be revised and provided in "plain language".	Not addressed. Recommend Province considers further amendments in Bill 73.
20.	The *Planning Act* should be updated to allow the use of electronic notices in addition to or instead of newspaper ads.	Partially addressed. Alternative measures for informing the public is currently permitted for official plans and zoning by-laws and have now have been expanded to include provisions for plans of subdivision and consents. However, the sole use of electronic notices is still not permitted. It is also recommended that the regulations which prescribe the means for giving notice related to official plans, zoning by-laws and plans of subdivision, be amended to permit municipalities to provide notice in electronic format to listed persons and public bodies, provided those persons and public bodies consent to receiving such notices electronically.
21.	York Region already explains how citizen input was considered during the review of a planning/development proposal. However, to require reporting on all citizen input can be very time consuming and perhaps burdensome on lower-tier municipalities who receive much more input. Such an arduous process should only be undertaken if the Ontario Municipal Board places some amount of weight on the consideration.	Partially addressed. Bill 73 would require the OMB to have regard to written and oral submissions received by a municipal council. In addition, Bill 73 would make it mandatory for Notices of Adoption to explain the effect of written and oral submissions on the decision to adopt an official plan or official plan amendment, and for Notices of Decision to explain the effect of written submissions on the decision of an approval authority to approve, or to refuse to approve, an adopted official plan. The Region supports the added transparency with respect to documenting how input was addressed. However, the reference to oral

		submissions should be removed. Official documentation and response to oral submissions may be problematic for both the commenter and reviewer, given that not all municipalities are equipped to scribe and capture oral submissions.
22.	The Province should prohibit the conversion of employment lands, unless initiated through an upper-tier municipal comprehensive review.	An existing requirement in s. 26 (1) to revise an official plan if it contains policies dealing with areas of employment, including policies dealing with the removal of employment lands to ensure that those policies are confirmed or amended will be removed from the *Planning Act*.
23.	There is a need for mechanisms to streamline the infrastructure planning and approval processes under the Planning and Environmental Assessment Acts. As an example, the requirements of infrastructure master plans are often duplicated through the secondary plan process. Explicitly recognizing master plans in the *Planning Act* would eliminate this duplication.	Not addressed. Recommend Province considers further amendments in Bill 73.
24.	The Province consider legislative changes to the Planning Act that would allow approval authorities to place time limits on zoning approvals, similar to those lapsing provisions already available on plans of subdivision.	Not addressed. Recommend Province considers further amendments in Bill 73.

Summary of Newly Proposed *Planning Act* Amendments Introduced in Bill 73

Item No.	Newly Proposed *Planning Act* Amendments Introduced in Bill 73	York Region's Comments
1.	When the Ontario Municipal Board hears appeals resulting from the failure of a municipal council or approval authority to make a decision, the Board is now required to "have regard to" the information and material that the municipal council or approval authority received in relation to the matter, including oral and written submissions from the public.	The Region supports this proposed amendment to s.2.1.
2.	Policy statements issued under subsection 3 (1) in the *Planning Act*, such as the Provincial Policy Statement and Provincial plans are to be reviewed at 10-year rather than five-year intervals.	The Region supports this proposed amendment to s.3 (10).
3.	Currently, it is permitted but not mandatory to include, in official plans, descriptions of the measures and procedures for informing and obtaining the views of the public in respect of certain planning documents. Including such descriptions is made mandatory for a broader category of planning documents (subsections 16 (1) and (2)).	The Region supports this proposed amendment to s.16 (1).
4.	Appellants who intend to argue that appealed decisions are inconsistent with Provincial policy statements, Provincial plans or upper-tier official plans must identify the issues in their notices of appeal. If an appellant fails to do so, the Ontario Municipal Board may dismiss all or part of the appeal without a hearing.	The Region supports this proposed amendment to s.17 (25.1).
5.	Decision-makers would be permitted to use mediation, conciliation and other dispute resolution techniques in certain appeals. When a decision-maker gives notice of an intention to use dispute resolution techniques, the time for submitting	The Region supports this proposed amendment to s.17 (37.2) and s.17 (37.3).

	the record to the Ontario Municipal Board is extended by 60 days.	
6.	Currently, subsection 26 (1) requires a municipality to revise its official plan at five-year intervals, to ensure that it aligns with Provincial plans and policy statements and has regard to matters of Provincial interest. The re-vision schedule is adjusted to require revision 10 years after a new official plan comes into force and at five-year intervals thereafter unless the plan has been replaced by a new official plan. An existing requirement to revise the plan in relation to policies dealing with areas of employment is removed.	The Region supports this proposed amendment to s.26.

NOTE: There are several other new proposed amendments that related to the jurisdiction of local municipalities. The Region will defer comments on these proposed amendments, given they are out of scope for Regional planning matters.

Attachment 2

York Region Response to Bill 73 as it relates to the

Development Charges Act, 1997

York Region generally commends the Province for its proposed amendment to the *Development Charges Act, 1997.* The Region hopes the potential for higher recovery of growth-related capital costs is realized in the regulations implementing the proposed Bill.

The following response to the proposed amendments under Bill *73* is organized into three categories:

(a) Amendments in Bill *73* that were addressed in the Region's submission to the Province in 2014;
(b) Amendments in Bill 73 that were not addressed in the Region's submission to the Province in 2014; and
(c) Areas not addressed by Bill 73.

Amendments in Bill 73 that were addressed in the Region's 2014 submission

York Region strongly supports the removal of all ineligible services, from both legislation and regulations

Bill 73 proposes to delete the list of ineligible services from subsection 2(4) of the Act. Ineligible services would be prescribed in regulations.

Pursuant to the proposed amendment to subsection 60(1)(c), ineligible services may be prescribed by regulation. The Region recommends that this proposed amendment be struck from the legislation. Municipalities should be able to include all growth-related costs in their development charges, as long as they can provide a proper justification in the Background Study, including municipal administration buildings and hospitals.

York Region's positions is that all waste management services should be eligible for DCs

York Region believes that waste management should be a fully DC recoverable cost (beyond the current waste diversion proposal). Many larger municipalities are making significant investments in capital-intensive waste management infrastructure, driven in part by the need to service growth in an environmentally acceptable way (e.g., blue box

processing, organics processing, and energy-from-waste facilities). For example, the total cost for the York Durham Energy Centre, an energy from waste facility, was approximately $250 million. The demand for Waste Management services is directly linked to growth because the quantity of waste material to be managed increases in direct proportion with the population.

York Region is identified as a ‘place to grow’ and an area for intensification in Ontario. This will result in increased multi-residential housing stock. Waste from multi-residential buildings tends to be more difficult to divert and more expensive to process due to increased levels of contamination. This may result in a need for additional, more costly infrastructure in the future to effectively service this sector.

The Province's Growth Plan and Provincial Policy Statement strive for Urban Growth Centres and intensification areas that are high quality, vibrant and attractive places to live. Part of creating an appealing residential environment involves burying hydro lines and similar above-ground infrastructure. However, Bill 73 does not speak to the inclusion of relocated or buried utility services or services to support urbanization as eligible services.

The Region asks that the Province confirm that burial of above ground services such as hydro lines is eligible under the Act.

York Region is of the position that municipal input should be required for any changes to eligible services

Municipalities should be consulted before any changes are made to eligible/ineligible services. Changes in DC eligible services have the potential to require existing residents to pay for programs mandated by the Province that are currently funded through development charges (e.g., water conservation and inflow and infiltration reduction programs).

York Region is of the position that the removal of the 10-year historic service level cap should apply to all services

York Region supports the removal of the 10-year historic average for calculating service standards, but notes that this should be applicable to all growth-related projects and should not be restricted to prescribed services. It is recommended that the Province identify any services for which the historic service cap will remain in effect before Bill 73 is passed. Removing the 10-year historic average has the potential to result in long-term cost savings for all municipalities.

Level of service needs should be assessed based on regulatory requirements, regardless of the historic level of service. There are a number of regulations that specify service level, especially for water/wastewater. This includes regulations under the *Safe*

Drinking Water Act, 2002, *Clean Water Act, 2006*, and the *Lake Simcoe Protection Act, 2008*. It is recommended that the Act be amended to require that service levels be based on regulatory requirements rather than historic service levels. This is especially important given that the Province is considering measures that have the potential to result in significant infrastructure costs. For example, the announcement of a cap and trade program and the proposed targets under the *Great Lakes Protection Act* may have significant impacts on capital costs in the future.

The Region also recommends the removal of subsection 5.2(3), which says the estimate for a prescribed service shall not exceed the planned level of service over the 10-year period following the background study. The Region is of the position that, at the very minimum, subsection 5.2(3) should be amended to refer to a 20-year period.

York Region is of the position that the removal of the 10 per cent statutory reduction should apply to all services

The proposed legislation would remove the mandatory 10 per cent reduction in capital cost for transit services. This is a positive step.

The Region's position is that the 10 per cent statutory reduction should be removed for all services.

York Region is of the position that municipalities should be able to charge DCs for joint projects where the service is exclusively in another municipality

In November 2014, the Region made a supplementary submission to the Ministry regarding the ability of the Region to fund capital improvements to Steeles Avenue through development charges. The Region was advised by external counsel that this would not be permitted under the *Development Charges Act* because Steeles Avenue is wholly within the jurisdiction of the City of Toronto and, accordingly, does not qualify as a service provided by the Region. The Region requested that the Act be amended to provide that development charges may be levied for joint municipal projects where the service is within the exclusive jurisdiction of only one municipality.

The proposed new Section 59.1 of the Act would confer a regulatory power to broaden the types of undertakings which may be subject to development charges. Following introduction of Bill 73, Regional staff, in consultation with external counsel, met with the Ministry and provided proposed wording for a regulation under Section 59.1 which would achieve the Region's objectives. This submission is currently under review by the Ministry's legal counsel.

Amendments in Bill 73 that were not addressed in the Region's submission to the Province in 2014

York Region is not supportive of any provision which allows developers to 'lock in' rates

Bill 73 proposes to add a provision that the development charge for developments that consist of one building (i.e., tower or high-rise developments) is payable upon the first permit being issued (this could be an excavation permit).

We understand that the original rationale behind this section was as a 'lock-in' of rates provision and should not read as 'payable'. Instead, it was envisioned that this section should be constructed akin to 'rates can be locked in as of first building permit being issued'. We further understand that this clarification may be addressed after the second reading of the *Bill.* If the Province chooses to allow developers to "lock-in" their rates then the charges must be remitted at the time rates are locked in.

The Region may be adversely affected by this proposed change. Some developments take years to build and, if development charges have risen, this change would allow developers to pay 'locked in' rates at an earlier, cheaper rate. The Region is opposed to this change.

York Region is not supportive of the Province being able to prescribe area-rated development charges

Currently, a municipality may pass different development charge bylaws for different parts of a municipality, at its discretion. Bill 73 proposes to provide the Province with the ability to prescribe by regulation the areas, services and municipalities where area-rated development charge bylaws would apply.

In addition, Bill 73 would require municipalities to consider the use of area-rated development charges and by-laws in their DC background studies unless the municipality is already required to pass an area rated development charge bylaw pursuant to the regulations. In its submission to the Province, the Region indicated that municipalities should retain the flexibility to choose area-specific DC rate structures when the situation warrants them.

However, the Province is also proposing to give itself a new power to prescribe areas and rates. The Region would not be supportive of any such action and would ask that this new subsection be removed.

York Region is supportive of increased reporting requirements in the Treasurer's annual financial statements

Bill 73 proposes to revise section 43(2), which governs the Treasurer's annual financial statement to the Ministry. In addition to including statements of the opening and closing balances of the reserve funds, and transactions relating to those balances, the Treasurer of a municipality is now required to include:

- statements identifying all assets whose capital costs were funded under a development charge bylaw;
- statements identifying the manner in which any capital cost not funded under the bylaw was or will be funded;
- a statement as to compliance with the new subsection 59.1, which prohibits "voluntary" or agreements.

In addition, the new subsection 43(2.1) requires the Treasurer's statement to be made available to the public.

The Region welcomes greater transparency in the reporting requirements. York Region already provides the information articulated in the first two points above, and posts the information on its website. Any costs incurred by municipalities for reporting should be recoverable through development charges.

York Region requires further clarification as to the requirements of the Asset Management Plan that is to inform the Background Study

Bill 73 proposes to add a requirement that background studies include an asset management plan, and that the plan be prepared in the manner to be prescribed by regulations.

It is recommended that the Province clarify the requirements for the content and format of this plan, and that the asset management plan be excluded from the grounds for appeal of a Development Charge Bylaw.

It is especially important to know the level of detail and analysis expected for an asset management plan to demonstrate *"*that the assets are financially sustainable over their full life cycle*".* Typically, the timing of asset management plans, water rate studies, and infrastructure master plans do not necessarily coincide with the DC Background Study cycle. Requiring all of these plans to be assessed concurrently has the potential to result in a significant administrative burden for municipalities.

The regulations also need to clarify the relationship between the asset management plans developed for master plans and other purposes and the asset management plan required for the Background Study.

Areas not addressed by Bill 73

York Region requests the Province to permit the OMB to issue rulings in favor of municipalities

Bill 73 did not address the Region's concerns regarding the powers of OMB. The OMB is prevented from issuing a ruling that would benefit a municipality (i.e., increases in DCs payable, remove or reduce exemptions). Furthermore, the onus is on the municipality to justify a charge. Consequently, appellants and municipalities bear different levels of accountability and risks. It is the position of the Region that the Province should consider repealing *section* 16(4) of the *Act*, which limits the ability of the OMB to issue rulings that benefit municipalities.