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MAH Planning Act Review 2013
Planner: L. Maitland

TO:	**CHAIR AND MEMBERS** **PLANNING & ENVIRONMENT COMMITTEE**
FROM:	**JOHN M. FLEMING** **MANAGING DIRECTOR, PLANNING AND CITY PLANNER**
SUBJECT:	**RESPONSE TO LAND USE PLANNING AND APPEAL SYSTEM REVIEW FOR THE MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING** **MEETING ON FEBRUARY 4, 2014**

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning & City Planner, the following response **BE ENDORSED**, it being noted, that this response was submitted to the Ministry of Municipal Affairs and Housing to satisfy its requested deadline. The City's final response, including any recommended amendment will be confirmed in further correspondence following Council consideration.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Provincial Policy Statement 5 Year Review – City of London Response (November 26, 2012) – City staff reviewed and provided feedback on a draft version of the Provincial Policy Statement at the request of the Ministry of Municipal Affairs and Housing.

BACKGROUND

The Government of Ontario is reviewing the way cities and towns plan for development. The intent of the review is to ensure that the land use planning and appeal systems, and the development charges system are predictable, transparent and cost effective. The Ministry of Municipal Affairs and Housing is consulting from October 2013 to January 2014 across the Province with the public, municipalities and stakeholders on what changes to the systems are needed.

The following response addresses questions posed by the Province which is seeking input on improving efficiencies to the land use planning legislation and procedures across Ontario. The following response is the recommended City response to the 17 questions provided by the MMAH as part of its consultation package which is attached as Appendix 'A'.

RESPONSE TO CONSULTATION

MMAH – Land Use Planning and Appeal System Review

City of London Response

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

Provincial support to municipalities can further assist the maintenance of current planning documents. This could include:

i. Streamlining the process for provincial review and approval of Official Plan amendments under Section 26 of the Planning Act in a more streamlined way. In London, it was more than three years from the time that Council adopted our Official Plan, to the time that the last appeal was dispensed with through the Ontario Municipal Board. During this 3+ year period, our Official Plan was not up-to-date with provincial directions or Council's vision.

ii. More regular formal contact throughout the process, so that there isn't a protracted period of review at the end of the process. This is a the approach that is being taken, in a collaborative way, between our City and the Ministry through our current five-year review process.

iii. A more proactive and thorough educational and training campaign by the Province, to bring municipalities up to speed on new provincial policies, provide best practices, assist with model Official Plan that illustrate how local Official Plan policies could be structured to implement new sections of the Act or new provincial policies.

iv. Preparing and issuing regulations concurrently with changes to the Act so that there isn't a long gap between new Planning Act provisions and the guidelines that help municipalities to implement these sections.

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

i. The Province could clearly reward those municipalities that keep the local provincial body included and up-to-date through Official Plan reviews undertaken through Section 26 of the Act, by conducting the provincial review and approving those plans more quickly. It is a disincentive to have protracted provincial reviews and approvals and expediting such processes would serve as an incentive for municipalities to update their plans in a more timely manner.

   Municipal budgets are very constrained and it is difficult to marshal the time and resources to undertake policy reviews and amend Official Plans to be up-to-date with new provisions of the Planning Act and new provincial policies. The Province could provide financial incentives to municipalities to pay some, or all, of study costs associated with timely amendments to their official plan that respond to Planning Act or policy changes. Where a municipality does not amend their official plan within a

specified period, they would not be eligible for such financial incentives. Of course, the Province could prescribe what study costs would be eligible and could cap a cap on the incentive available to any municipality.

ii. Where a municipality goes through an Official Plan review process under Section 26 of the Act, and they receive provincial approval, there should be no appeal opportunity to the Ontario Municipal Board. Eliminating appeal rights on policies adopted by municipalities in their official plans for the purpose of conforming to Provincial direction would further both the Provincial goals promoted through the updates but also municipal efforts to remain consistent with Provincial policy initiatives.

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

i. It can be very expensive and time consuming to amend local Official Plans to make them consistent with new provisions of the Ontario Planning Act and new provincial policy. Such processes involve research, consultation, and often legal challenges. However, it is understood that changes in provincial interest can change over time and we do not believe that it is wise for the Province to limit a municipality's ability to amend its plan under Section 26 to keep up-to-date with such changes. The current regularity/spacing of Planning Act & PPS reviews and amendments by the Province is reasonable. Making such reviews and amendments more regular would be problematic.

ii. With respect to non-Section 26 amendments, a municipality has a high level of control to exercise the specificity of the policy in its Official Plan. If a municipality would like to limit or reduce amendments to its plan, it could prepare more general and flexible Official Plan policies. We do not think that it is in the municipality's or anyone else's best interest to limit the opportunity for amendment to the Official Plan by way of time frames. We think this could unduly limit development opportunities that may emerge, requiring an Official Plan amendment that is reasonable and in keeping with the overall intent of Official Plan policies.

   Official plans are intended to be higher level more strategic policy documents and should not need to be so specific that changes are made on a highly regular basis. Instead of reducing the frequency of such amendments by limiting them to occur only within specified timeframes, the provision of a wider array of strategic tools, including conditional zoning regulations, would enhance the ability of municipalities to ensure land-use decisions remain consistent with Official Plans.

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

i. Permitting additional forms of notice beyond traditional print media would more widely spread information and promote collaboration. New forms of notice can reach additional segments of the population to bring in more people at the onset of a planning application process and mitigate entrenched positions being taken up through the application review process. Permitting electronic notice provided through the internet provides a number of beneficial possibilities for informing applicants and the public.

ii. In some cases we have witnessed a propensity for applicants to avoid engaging in discussion and problem solving with their intention to simply appeal an application to the Ontario Municipal board if there is no decision within the statutory timeframe identified in the Act. In these cases, applicants are intent on proceeding to the Ontario Municipal Board, and make little or no effort to resolve issues.

In this way, the statutory timeframes can act as a deterrent to a quality process that involves various stakeholders, promotes information sharing, and encourages everyone to take a problem-solving approach where appropriate and possible. We believe that the timeframes associated with zoning amendments are most likely to lead to this kind of issue. Furthermore, the rigidity of timelines can thwart the collaborations that more complex applications can require.

iii. The Province established zoning with conditions as a new planning tool a number of years ago, but this tool cannot be used because the regulations associated with this Section of the Planning Act have not been prepared. This would be an extremely useful tool for London and we are anxious to see the regulations come into effect.

Zoning with conditions can help to provide the kind of conditions relating to a planning approval that reflect an agreement between a community and a development proponent, all within the context of good planning principles. Without this tool, developments are often not approved, or are approved and then appealed to the Ontario Municipal Board, because there is no ability to establish the context for an agreed-upon solution through existing zoning tools. We don't believe that bonusing and the development permit system effectively achieve the same results and are not effective replacements for conditional zoning tools.

Regulations prescribing the nature of zoning conditions that can be employed in conditional zoning can set useful parameters to make this an effective legislative tool.

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

An appeal to the entire Official Plan or a Secondary Plan can serve as a tool to hold up processes, delay the introduction of positive new policies, and can undermine economic development opportunities that may come with new plans. Such broad-sweeping appeals should not be permitted and there should be more onus on a appellant to "zero in on" the concern which forms the basis for their appeal.

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

Where a Council did not make a decision within the prescribed timeframe, and an appeal is launched, there should be a specific timeframe by which additional appeals can be filed. This would allow municipalities, communities and applicants to understand the scope of appeals to be addressed at an OMB hearing and effectively prepare for such a hearing.

Another concern is that there is no legislated time frame beyond which an appeal on the basis of a non-decision by the municipality may be initiated. Although not common, there are instances where applications effectively become "inactive" due to a variety of

reasons such as the requirement for additional information from the applicant. In such circumstances there may also be a concerned community which may never become complacent that the matter has fully been resolved given the ability to appeal a non-decision of Council at any time.

Lastly, there are circumstances whereby the decision of the approval authority is to request that additional consultation between the applicant and stakeholders occur in an effort to resolve outstanding issues. While this is not the “approval/refusal” decision contemplated by the Planning Act, it is still a decision of the approval authority. This decision should not be regarded as a non-decision given that it is being made in an effort to seek a mutual resolution (see 4(ii)) above and/or is being made in an effort to obtain the necessary additional information required to make an informed decision.

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

No. As noted in our answer 4(ii), above, prescribed timelines can undermine the opportunity for problem-solving and collaboration, rather than encouraging it to occur. Applicants can simply stay entrenched in a position, knowing that the “clock is ticking” and they can proceed to the OMB within that timeline. To also establish consequences to the municipality if such timelines are not met would only exacerbate this problem in our view.

Complex applications which require collaboration and problem solving between the applicant and various stakeholders sometimes cannot possibly be resolved within the prescribed timelines (particularly the 4 month period for zoning amendments).

We believe there needs to be a more sophisticated measure of whether an application is proceeding through the process expeditiously, or whether it is being unduly delayed.

We raise, for your consideration, the concept of a hearing which deals first with the issue of whether appropriate efforts are being made by both parties to address and resolve issues within an expeditious and reasonable process. Through this phase of the hearing, the OMB could decide to move to a full hearing of the issues if it believes that the municipality has not met this test, or could send the application back to the municipal Council to complete the process (perhaps within a specific timeframe) acknowledging that an appropriate process was being followed.

Although the concept of additional consequences is not recommended, in the event that additional consequences are implemented when there is no decision in the prescribed timeline, it is preferable to extend the prescribed timeline prior to the application of additional consequences.

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

Implementing a development permit system City-wide represents a tremendous undertaking that involves removing the zoning by-law, drafting the new regulations, training staff, and likely re-structuring a planning organization to be administer and enforce a DPS. The significant effort required to implement a DPS probably explains why more municipalities haven’t done so. In addition, there is the downside risk of

moving away from a "tried and tested" zoning process – with a lot at stake by changing property owner's development rights through the process.

London Planning Staff have expressed an interest in DPS and would like to continue to explore the concept to help us instill flexibility, streamline processes, and address important design issues that zoning by-laws don't adequately address. We appreciate that the Province has attended our offices to discuss the concept and provide us with information and we look forward to continuing this dialogue.

We think that the Province could significantly mitigate the perceived risk to municipalities (planners, senior administrators, councilors, communities and developers) with more information and more rigorous educational opportunities. While the theory of DPS is understood, it would be helpful to see how it is being used in practice and how it is applied through – more detailed explanation, case studies of locations where it is applied that are rigorously explained (note that these case studies need to be relevant to the context of different municipalities – in London's case, we would like to see a case study of how it is applied City-wide to replace zoning and in a mid-sized or large city context), and additional case studies where similar concepts are being applied (eg. US, UK, Australian examples).

Finally, it would be very useful if the Province could prepare one or more model Development Permit System documents (localized and city-wide as an example) to demonstrate how such documents could be used, what they would look like, how fundamental issues can be addressed. In our submission, it's all about showing how the concept can be applied and helping to mitigate the risk to municipalities in doing so.

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

i. As we have noted above, we believe that prescribed timelines have caused problems in some cases where applicants become entrenched knowing they can take their issue outside of a planning process and move to the OMB within such a timeline. We believe that a two-tiered OMB hearing process, relating to prescribed timelines, would be beneficial, as we have described above. Such a system would encourage applicants to remain engaged in problem-solving efforts through planning processes with community groups.

ii. We believe that there should be more onus on appellants to Council-made decisions to illustrate why that democratically-arrived-at position is not appropriate. We do not believe it is appropriate for the OMB give equal weight to a council position and an appellant's position. Rather, from the outset of the hearing, there should be greater weight given to council's position and a more formalized greater onus on the part of the appellant to show why that council position is inappropriate beyond those prescribed in S.2.1 of the Planning Act.

iii. In concert with answer (ii), above, we believe that the OMB should have a higher standard when considering appeals and more appeals should be dismissed. While we do not propose any specific standard, we think that a higher bar should be established. Furthermore, a decreased willingness of the Board to hear appeals where mediation is possible would also provide for more locally developed solutions.

Although, the notion of awarding costs is technically available to successful parties at the OMB, it does not seem to be often applied. Perhaps the imposition of costs for frivolous or vexatious appeals, for appeals that are submitted for the purposes of delay, or for appeals that are intended to oppose competition.

iv. We believe that there is greater opportunity for the Province to provide more useful educational documents for the public. While the Province has provided some very good documentation to help guide citizens participating in planning processes, we think there is a need to provide alternative forms of such guidance that is easier to understand by the public (for example video guides). We think there should be more emphasis on the balance of considerations through processes, so those becoming involved in such processes know that the Province's intent is that planning matters are addressed in balance.

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

An investigation into setting up a local appeal body in the City of London was conducted. At this point Staff raise the following concerns:

- Such a body requires significant administrative support, including appointment processes, scheduling, potential stipend, education and training, legal support, etc.
- It was felt that there would be a high level of education required in order to ensure that this body was in fact acting as an appeal body as intended
- There was concern that there would be confusion in having one body (Committee of Adjustment) appointed by Council whose decisions would be reviewed by another body that is appointed by Council (confusing and the optics of a redundancy).
- Potential for increased appeals to the Divisional Court.

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

As no local appeal body has been established commentary on how they operate is premature at this time.

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

The new requirements of the Act relating to complete applications and pre-application consultation have been very helpful in allowing us to:

- Dialogue with the applicant early to provide a good context for the application;
- Establish expectations early in the process, so the applicant is clear on what is required for a complete application and also to identify early issues that should be addressed through the application;
- Process applications expeditiously; and,
- Have the required information to meaningfully engage the public and to make a quality recommendation that represents good planning.

Municipalities, should be empowered to require that all types of planning applications be subject to pre-consultation and complete application requirements. We acknowledge that policies should be required by the Province in an Official Plan to outline these requirements, if a municipality is to avail of them. The current inconsistency in what is required between different types of applications is confusing and undermines our ability move processes along expeditiously, have all of the information required by the public to interface with the process, and have the information that we require to make a timely decision that represents good planning.

Pre-consultation often improves the ability of municipal staff to follow statutory timelines during the application process. With pre-consultation a municipality can dialogue with the prospective applicant to discern objectives and options to address them as well asthe appropriate kind and amount of information to evaluate in consideration of the application. Establishing from the outset the nature of information required for good planning practice tends to foster a mutual understanding of what is required making for a smoother process that can meet statutory timelines.

Minor Variance and consent applications are sometimes complex and have real on-the-ground impacts/consequences in the community. However, there is no pre-consultation permitted or required within the Planning Act for these applications. As a result, reviews are often fraught with incomplete information which makes it very difficult for members of the public or staff to reach effective conclusions/decisions on such applications and meet prescribed timelines. Similarly, there is no requirement for a complete application for site plan applications which can create processing difficulties and there is no consultation required for consent applications. There should be consistency amongst all types of applications.

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

London as a single-tier municipality has no comment.

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

i. We believe that communities are being shut-out of important discussions relating to the form of adaptive re-use projects. We believe this is a major issue that the Province should address.

   This is due to the current definition of development in the Planning Act. Based on the current wording of the Planning Act, Section 41,site planning cannot be invoked for an adaptive re-use of an existing building, unless it can be demonstrated that the alteration is an “alteration to a building or structure that has the effect of substantially increasing the size or usability thereof. This has proven to be a very difficult test to meet in some circumstances.

   In Ontario, and in London, we will be increasingly relying on infill, intensification and re-purposing of existing buildings to accommodate growth. However, without the ability to address a variety issues such as parking, landscaping, and other site plan issues, the re-

purposing of a building can be very intrusive and represent bad land use planning within an existing community.

An illustrative example may help to explain this point. Consider a commercial building within a residential context that requires a zoning amendment to allow for an adaptive re-use for residential purposes. While the re-use may be appropriate, issues such as parking, landscaping, access, fencing may be important considerations that determine whether the re-use is positive or not. Considering and addressing these issues is often part of the community conversation on a zoning amendment such as this. However, unless it can be shown that the residential use "has the effect of substantially increasing the size or usability thereof", the municipality has no ability to follow-up on those important features of the proposed re-use as a site plan application cannot be required.

We see this as a major issue in facilitating adaptive re-use projects. It removes a tool that can be used by Planners to resolve issues and gain community support for such adaptive re-use projects.

ii. The regulations under the Planning Act do not support current and appropriate new ways of providing official notice for planning applications. The regulations still require notice through newspaper media. Notices are required to include a large amount of information, to be printed in newsprint media, which is expensive and, as our research shows us, does not effectively reach a broad cross section of our community.

The City of London currently uses a variety of additional alternative notice procedures (signs, web site, social media, etc.), but the regulations still require us to put the full notice content in a local newspaper. This requirement is antiquated, ineffective, unnecessary, and expensive. The requirement should be removed altogether, or modified such that a more limited amount of information can be provided in newsprint, with pointers to other sources (e.g. web sites) that provide greater detail.

iii. The comments that we have made above in response to other questions, relating to prescribed time limits and OMB hearings, will help to address this question.

iv. Lack of complete application requirements for Site Plan and Minor Variance applications resulting in a lack of information being available at the front-end of the application review process (as per response to question 12, above).

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

Requiring that a municipality demonstrate how citizen input was considered is appropriate. It is the standard practice of professional planners that citizen input is considered in the review of a planning/development proposal. In London this input is documented throughout the planner's report rather than solely in a specific designated section. The report provides an overview of the comments received and is written to address those land use planning concerns raised by the public. If a requirement in the Planning Act or regulations, is being contemplated as a method to explain how public input is considered, it would be useful to prescribe by regulation at least the minimum expectation of the Province in this regard, to ensure some level of consistency among all municipalities in implementing the Province's intentions.

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

The Southwestern Ontario region has been “left off the map” in the provincial growth planning that has occurred in the greater golden horseshoe and the corresponding funding that has flown from that growth plan. A plan for the Southwestern Ontario region could coordinate municipal growth throughout the region, focus our resources on mutually supportive infrastructure, and allow us to plan for provincial funding to effectively grow the region as a whole.

Our comments relating to development charges relate heavily to the question of infrastructure decisions.

Where there are declining industrial areas that have lost favour with the market, we have, and will have, significant vacant lands for the foreseeable future. These lands should not be included in the calculation of employment lands. While it may not be practical to re-designate these areas for residential or commercial purposes while a variety of industrial uses remain “sprinkled” within the area, these areas act to over-state industrial land supply and diminish a municipality’s ability to plan for new, more viable, industrial areas to grow the local economy.

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

As noted in response to previous questions, where a municipality goes through an Official Plan review process under Section 26 of the Act, and they receive provincial approval, there should be no appeal opportunity to the Ontario Municipal Board. Eliminating appeal rights on policies adopted by municipalities in their official plans for the purpose of conforming to Provincial direction would further both the Provincial goals promoted through the updates but also municipal efforts to remain consistent with Provincial policy initiatives

Failing this, appeals to policy amendments that are made to conform with new provisions of the Planning Act or Provincial Policy Statement should be defended by the Province at the OMB. Having Ministry staff present at OMB appeals to defend Ministry policy would assist in ensuring that Provincial policy is actively supported.

Additional Comments:

Section 35 of the Planning Act specifically precludes a municipality from zoning on the basis of relationship. This was targeted at zoning that may define a residential unit that is occupied by more than three unrelated people as a different use (e.g. rooming house) than a “standard” residential unit. Households are a “use” and the relationship of those within a household changes the nature of that use. Removing this tool from municipalities has created significant problems in near campus neighbourhoods whereby single detached dwellings are effectively being used as rooming houses (which is a separately defined use than a single detached dwelling) in the absence of a Zoning By-law amendment, a public participation process, or a decision of municipal council. This

matter also results in on-going efforts of by-law enforcement staff to investigate concerns. The Province has not replaced this tool to address this issue and municipalities across the Province are left with ineffective tools to address near-campus neighbourhood problems.

Section 34 of the Planning Act should more explicitly allow for greater consideration of urban design matters in the review of planning applications. Zoning with conditions provides one such opportunity to include urban design matters in the approval of an application. Urban design matters can have immense impact on whether a zoning amendment represents a positive contribution in its location and these matters should be addressed concurrently with other matters considered in a zoning amendment.

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MAH Planning Act Review 2013
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January 17, 2014
LM/LM
Attached: Land Use Planning and Appeal System - Consultation Document • Fall 2013 (produced by MMAH)

Appendix 'A'

Land Use Planning and Appeal System - Consultation Document • Fall 2013

Land Use Planning and Appeal System

Consultation Document • Fall 2013

Ontario

LAND USE PLANNING AND APPEAL SYSTEM CONSULTATIONS

Ontario is reviewing the land use planning and appeal system to make sure it is predictable, transparent, cost-effective and responsive to the changing needs of communities.

The Ministry of Municipal Affairs and Housing will be consulting in the fall of 2013 across the province with the public, municipalities, Aboriginal groups, community groups, the building and development industry and other key stakeholders on what changes to the system may be needed.

This document is intended to help focus the discussion.

LAND USE PLANNING AND APPEAL SYSTEM OVERVIEW

Ontario has many diverse communities, geographic landscapes, resources, populations, opportunities and challenges. Land use related decisions take into account these diversities and the need to balance a range of priorities.

Ontario's communities are constantly changing. These changes create challenges, but also opportunities for compact growth, intensification, more efficient use of infrastructure and greater sustainability.

Our land use planning system gives us the tools and processes to manage this change so that we can build the cities and towns we want to live and work in. The planning system helps each community set goals and find ways to reach those goals while keeping important social, economic and environmental concerns in mind. It does this by balancing the interests of individual property owners with the wider interests and objectives of the community.

Ontario

Well-planned communities attract jobs and support economic development. They make effective and efficient use of their infrastructure, and offer appropriate transportation choices. They address environmental and resource concerns such as rainwater runoff and soil erosion. They offer their citizens a high quality of life, opportunities for a healthy lifestyle and safe, well-serviced places to live, work and play.

Did you know?

Land use planning tools can be used to support a community's **sustainable planning** objectives.

The keystone of Ontario's land use planning system is the ***Planning Act***, administered by the province through the Ministry of Municipal Affairs and Housing. The *Act* sets the framework for planning and development.

Supporting these ground rules are the **Provincial Policy Statement (PPS)** and provincial plans, such as the **Growth Plan for the Greater Golden Horseshoe**, **Growth Plan for Northern Ontario**, **Greenbelt Plan**, **Oak Ridges Moraine Conservation Plan**, **Niagara Escarpment Plan** and the **Lake Simcoe Protection Plan.** Provincial plans provide more detailed policy directions for specific geographic regions.

The PPS is a key part of this system and is made under the authority of Section 3 of the *Planning Act*. It integrates all provincial ministries' land use interests and it applies to the entire province. The PPS includes land use policies on matters like natural heritage, agriculture, transportation, housing, economic development, mineral aggregates (rock, gravel or sand used in construction) and water resources. These policies may be further detailed in provincial land use plans, which are created under various statutes. These plans provide provincial direction for specific geographic areas of the province. They address matters such as environmental conservation, growth management and economic issues. In order for these provincial policies and plans to be implemented locally, the *Planning Act* requires that all local planning decisions shall be consistent with the PPS, and shall "conform" or "not conflict" with provincial plans in effect.

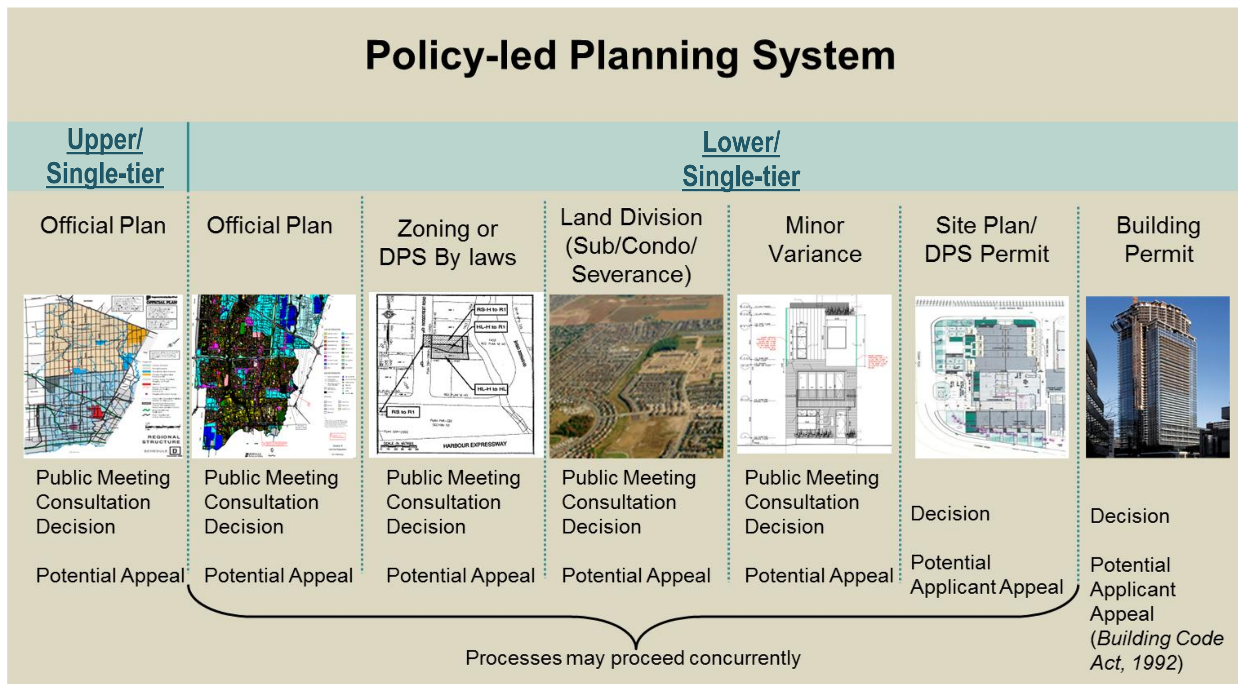
Key Participants

- Province
- Municipalities/ Planning Boards
- Property Owners Developers
- Aboriginal Communities
- Agencies
- Public/Stakeholders
- Ontario Municipal Board

- Province leads with legislation, policy and plans, and provides approval function where required
- Municipalities implement policies through their official plans, zoning by-laws, planning decisions
- Planning boards provide advice and assistance to municipal councils for land use planning matters in the North
- Opportunities for input and involvement are important parts of the system (e.g. public meetings and open houses)
- System provides a process for change to most land use plans and allows most applications to be appealed to the Ontario Municipal Board as an independent body dealing with disputes

> **Did you know?**
>
> More information on the land use planning system can be found in the Ministry of Municipal Affairs and Housing's **Citizens' Guides to Land Use Planning**.

Within this structure, communities set out their own goals and rules in their official plans, which control how they will grow and develop. The planning system allows the public to play a key role in the planning process by giving them opportunities to review and comment on various planning matters. This is especially important in helping to shape the community vision, which the official plan seeks to achieve. Official plans are implemented through tools like zoning by-laws, site plans, plans of subdivisions, and development permits.



Once an official plan comes into effect, it can be amended at any time. Changes may be needed to incorporate new provincial policies or allow development that the policies in the current plan do not permit. These changes occur through an official plan amendment initiated by the municipality/**planning board** or a private applicant. The amendment is prepared and processed in the same manner as the plan itself. In some instances the official plan may be up-to-date; however the related zoning by-law may not reflect the updated official plan.

> **Did you know?**
>
> In 2011, 45 per cent of municipalities had up-to-date official plans.

Ontario

In those cases, a rezoning would be necessary to permit a development that conforms to the official plan. In addition, in order to obtain a building permit, the development must conform to zoning by-law requirements. As the needs of communities change, it is important that official plans and zoning by-laws are kept up-to-date, not only to reflect the changing needs of communities, but also to reduce the number of site-by-site amendments. By doing this, communities can reduce the likelihood of disputes that may result in **Ontario Municipal Board (OMB)** appeals.

Decision Timelines under the *Planning Act*

Application Type	Timeline to Trigger Appeals where Non-Decision
Official Plan Amendment for Municipal Decision	180 days
Official Plan/Amendment for Approval Authority Decision	180 days
Zoning by-law Amendment	120 days
Subdivision	180 days
Consent	90 days
Site Plan	30 days

The planning system also sets out timelines for decision-making on planning matters. If a decision isn't made within these timelines, the matter can be appealed to the Ontario Municipal Board. The timelines are based on application types. For example, an official plan amendment timeframe is 180 days, regardless of whether it is a simple amendment or a complex amendment.

Land use planning often brings together a number of competing interests. Since people have different ideas about what planning and development should accomplish, disputes are not uncommon.

If an application is challenged or disputed, it can generally be appealed to the Ontario Municipal Board. The OMB is responsible for hearing appeals on matters concerning planning disputes and gets its authority to hear planning matters from the *Planning Act*. It is a quasi-judicial tribunal which makes legally-binding decisions independent of the government. The OMB's authority also includes hearing disputes related to fees and amount of parkland dedication, etc.

Did you know?

Almost all other provinces have boards that hear appeals from land use planning decisions. The types of land use planning matters that come before them may vary.

Did you know?

The OMB bases its decisions on:

- evidence presented
- relevant law
- municipal land use planning policies
- Provincial Policy Statement and provincial plans
- principles of good planning

Ontario

Ontario Municipal Board Caseload

Files (Applications and Appeals)	2007/08	2008/09	2009/10	2010/11	2011/12
Minor Variance	578	552	363	495	581
Consent	279	260	176	229	305
Zoning By-laws	275	190	187	197	159
Official Plans	198	162	169	172	120
Zoning Refusal or Inaction	172	163	146	160	125
Plans of Subdivision	95	68	76	98	68
Municipal and Misc. (including site plans)	92	83	68	90	115
Development Charges	16	15	60	9	18
Land Compensation	25	29	42	34	31
Capital Expenditures	8	9	11	9	5
Joint Board	0	2	1	1	0
Site Plan after Nov. 15	25				
Other		48	33		
Total	1763	1581	1332	1494	1527

Planning Act (Minor Variance through Municipal and Misc., and Site Plan after Nov. 15)

- A large number of appeals from decisions/lack of decisions of approval authorities in respect to the updating of major planning documents to implement the Growth Plan for the Greater Golden Horseshoe and PPS, led to a number of OMB files.

*Source: Ontario Municipal Board Annual Reports

Did you know?

*In 2011/12, minor variances and consents made up 58 per cent of the OMB's planning application caseload.

Did you know?

**Planning Act* files received by the OMB decreased by 14% from 2007/08 to 2011/12 fiscal years.

Did you know?

*In 2011/12, the majority of the OMB caseload originated from the following areas:

- Toronto: 30 per cent
- Greater Toronto Area (excluding Toronto): 16 per cent
- Ottawa: 9 per cent

*Source: Ontario Municipal Board Annual Reports

LAND USE PLANNING REFORMS

Since 2003, the province has undertaken a comprehensive review of the land use planning system. It introduced various legislation, policies and plans such as the:

- Revised PPS, which provides direction on building stronger communities, the wise use and management of resources and protecting public health and safety;
- Greenbelt Plan, which established a permanent greenbelt of approximately 2 million acres across the Greater Golden Horseshoe to ensure the long-term protection of agriculture, natural heritage systems, water resources, recreation and tourism;
- Growth Plan for the Greater Golden Horseshoe, which was created to better manage growth in the Greater Golden Horseshoe by creating compact, complete communities, supporting a strong economy, efficiently using land and infrastructure and protecting agricultural land and natural areas; and
- Growth Plan for Northern Ontario, which aims to strengthen the economy of the north by providing a framework for decision-making and investment by both the province and local governments.

Along with these policies and plans, planning legislation and regulations have also undergone a number of major reforms. The goal of these reforms was to address concerns with how the system was working, and to build strong, prosperous communities within a healthy environment.

Some of the most recent legislative efforts to reform the system occurred in 2004 and 2007. Changes were made to:

- Provide clear rules and protection of public interests, such as:
    - requiring stronger adherence to the PPS;
    - introducing the requirement to consult with a municipality before making a planning application;
    - giving communities the authority to set out complete application requirements; and
    - requiring that planning documents be updated.

- Encourage public participation, such as:
    - enhancing public notification and requiring public open houses in some circumstances; and
    - increasing decision timelines.

- Introduce planning and financial tools, such as:
  - limiting ability to appeal settlement area boundary and employment land conversion;
  - allowing municipalities to have architectural controls;
  - enhancing **development permit system (DPS)** and **community improvement plan** provisions; and
  - introducing an option for local appeal bodies to adjudicate minor variances and consent disputes.

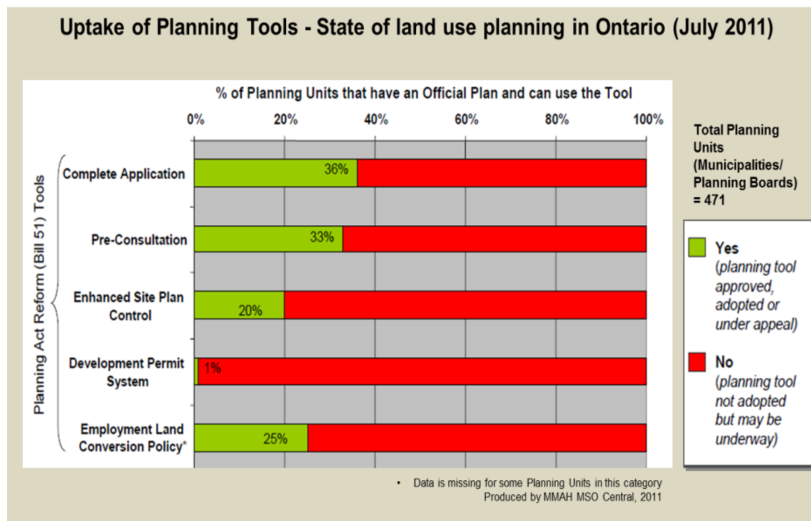
Did you know?

Since 2007, municipalities have had the authority to establish their own local appeal body to adjudicate specific local disputes.

- Provide clear rules for planning applications at the OMB, such as:
  - allowing repeat applications to be dismissed;
  - restricting OMB decisions to matters considered by municipal council;
  - dismissing substantially different applications than those originally submitted for a local decision; and
  - requiring OMB to have regard for local decisions and information and materials provided to council.

The figure below provides an overview of the uptake of some of the major planning tools on a province-wide basis. These tools include:

- Complete applications – municipalities can set out what additional information beyond those set out in regulation is required when a planning application is submitted.
- Pre-consultation – municipalities can pass a by-law requiring applicants to consult with them before submitting a planning application.
- Enhanced site plan – municipalities can consider the external and sustainable design of buildings.
- DPS – a land use planning tool that combines the zoning, site plan and minor variance processes into one application and approval process.
- Employment land conversion – municipalities have the ability to have the final say on whether designated employment lands can be changed to other uses.



CURRENT CONTEXT

Given the number of changes made to the planning system over recent years and some continuing concerns that have been raised about parts of the system, Ontario is reviewing the land use planning and appeal system to make sure it is predictable, transparent, cost-effective and responsive to the changing needs of communities.

Concerns about the system have focused around four key themes, which will be the focal point for the review:

Theme A	Achieve more predictability, transparency and accountability in the planning/appeal process and reduce costs
Theme B	Support greater municipal leadership in resolving issues and making local land use planning decisions
Theme C	Better engage citizens in the local planning process
Theme D	Protect long-term public interests, particularly through better alignment of land use planning and infrastructure decisions, and support for job creation and economic growth

We are interested in hearing your views on how the land use planning and appeal system is working. Any proposed new approaches or changes should consider the following guiding principles:

- the public is able to participate, be engaged and have their input considered;
- the system is led by sound policies that provide clear provincial direction/rules and is also led by up-to-date municipal documents that reflect matters of both local and provincial importance;
- communities are the primary implementers and decision-makers;
- the process should be predictable, cost-effective, simple, efficient and accessible, with timely decisions; and
- the appeal system should be transparent; decision-makers should not rule on appeals of their own decisions.

Please note that while we are interested in hearing your views, recommendations that would result in a complete overhaul of the land use planning and appeal system are not being considered at this time.

Ontario

More specifically, this consultation will **not** discuss or consider:

- elimination of the OMB;
- the OMB's operations, practices and procedures;
- removal of the provincial government's approval role;
- the restriction of the provincial government's ability to intervene in matters; and
- matters involving other legislation, unless housekeeping changes are needed.

Comments on issues that are not the focus of the consultation will be shared with the ministries or agencies responsible.

The government will give serious consideration to all of the comments and information received. The comments and suggestions will be used to help inform the government on what changes to the system may be needed.

ISSUES AND QUESTIONS TO DISCUSS

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

The *Planning Act* requires communities to update their official plans on a five-year basis, and zoning by-laws within three years of the official plan update. A common concern is that local planning documents are not updated regularly enough to reflect the changing needs of a community.

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

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

Another concern is the number of times that planning documents are amended. It has been suggested that a way of achieving more predictability is to limit the number of times these are changed. It should be noted, however that a reduced ability to change documents could affect the flexibility of the land use planning system, the ability to make local decisions, and the ability to address emerging issues.

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

Since issues are becoming more complex, and decisions on planning matters must be well informed, there are often significant costs involved in amending planning documents or seeking approvals. These increasing costs have placed pressures on municipalities, applicants and the general public to find ways to reduce costs.

It has been suggested that costs may be reduced by promoting more collaboration between applicants, municipalities and the public through the sharing and exchange of information such as resource materials and reports.

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

Appeals are often broad in scope and there may be many matters under appeal at the same time, resulting in long, complex and costly Ontario Municipal Board (OMB) hearings. Although the *Planning Act* currently requires the person or body making the appeal (the appellant) to specifically identify what is being appealed and why, sometimes the entire planning document (e.g. official plan) is appealed to the OMB by one appellant. This causes extensive appeal process delays and increases costs for the community in managing these types of far-reaching appeals.

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

Sometimes a matter is appealed to the OMB because a council did not make a decision within the required timeframe. In these cases, there is no time limit on when additional appeals may be filed on the same matter. As appeals continue to flow into the municipality, it can be very challenging to prepare for OMB hearings. The additional appeals result in delays in the OMB's hearing processes, increasing costs for everyone involved.

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

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

The Development Permit System (DPS) is a land use planning tool that combines the zoning, site plan and minor variance processes into one application and approval process. The tool shifts the focus upfront, creating a policy-led process, which promotes strategic, integrated long-term planning and provides certainty, transparency and accountability for the community. In order to implement a DPS, a municipality must undertake the following:

- Engage the public through enhanced public consultation opportunities;
- Amend its official plan to identify DPS area(s) and set out its goals, objectives and policies;
- Identify the types of conditions and criteria that may be included in the by-law, including discretionary uses, by which applications will be evaluated;
- Enact a development permit by-law to replace the zoning by-law, which provides flexibility by specifying minimum and maximum development standards and by allowing for a specified range of variation; and
- Identify what matters may be delegated from council to staff.

When the new system was introduced during the last round of planning reforms, it aimed to streamline local planning approvals while promoting development, enhancing environmental protection and supporting key priorities such as community building, brownfield redevelopment, greenspace preservation and environmental protection. To date,

only four municipalities have adopted this tool.

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

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

Municipalities have an integral role in the local land use planning process through decision-making, preparing planning documents and ensuring a balance of wider public interests and those of their local community. Achieving collaboration and consensus is often difficult, which may result in land use planning appeals.

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

Municipalities have the authority to create optional local appeal bodies that can hear appeals on local planning disputes involving minor variances and consents. To date, no municipality has established a local appeal body.

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

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

Municipalities have the authority to pass by-laws that require applicants to consult with the municipality before they submit their planning application. There are two clear advantages to this: the municipality knows about potential development pressures and can advise the applicant if technical information or public consultation is needed.

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

In some Ontario communities, land use planning documents and decisions are made at a regional or upper-tier level, which impact lower-tier municipalities. The *Planning Act* requires that all lower-tier official plans conform with upper-tier official plans. At the same time, it does not prevent lower-tier municipalities from **adopting** amendments that **do not** conform with the upper-tier plan.

This causes tensions and pressures in the planning system. The upper-tier may be prematurely forced to deal with lower-tier planning matters. The premature amendments may get appealed to the Ontario Municipal Board, cluttering the appeal system and adding more costs.

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

Theme C: Better engage citizens in the local planning process

Public participation is important to the land use planning system. However, at times the public may feel the process is too difficult to access, or they may believe they lack influence in planning decisions.

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

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

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

Well planned communities with good infrastructure are better able to accommodate new development and investment. Aligning the land use planning process with infrastructure investment, not only reduces costs and supports economic competitiveness, it also improves the economic well-being of the community.

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

In some cases, amendments to local planning documents are made to put in place a policy following significant public consultation, or to put in place something that's already been provincially approved (such as **Source Protection Plans**). These amendments can still be appealed.

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

SUBMIT YOUR COMMENTS AND IDEAS

You are invited to share your comments and ideas by **January 10, 2014**. You can:

Share your views at a meeting or regional workshop

Submit your comments through an online version of this guide at www.ontario.ca/landuseplanning

Environmental Bill of Rights Registry Number: 012-0241
http://www.ebr.gov.on.ca/

Email a submission to PlanningConsultation@ontario.ca

Write to us at:
Land Use Planning and Appeal System Consultation
Ministry of Municipal Affairs and Housing
Provincial Planning Policy Branch
777 Bay Street, 14th Floor, Toronto, ON M5G 2E5

Preparing an Email or Mail Submission

Please structure your submission as answers to the question listed above or submit responses in each of the theme areas.

Personal Information

Personal information you provide is collected under the authority of the *Ministry of Municipal Affairs and Housing Act*.

Thank you for your interest in Ontario's Land Use Planning and Appeal System.

NOTES

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