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Planning Act Review
Provincial Planning Policy Branch
777 Bay Street, 13th floor
Toronto, ON M5G 2E5

RE: Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the *More Homes, More Choice Act, 2019* (ERO number 019-0181)

On behalf of the City of Toronto I am pleased to submit comments from the City regarding the proposed regulation and regulatory changes under the *Planning Act* related to Bill 108, the *More Homes, More Choice Act, 2019.* The City has an acute interest in ensuring that the regulatory changes support good planning principles and advance development approvals while achieving the priorities of the City of Toronto. We recognize the intentions of Bill 108, and our comments are directed to ensure the transition to the new regime meets those intentions, providing for the housing needs of Ontarians, in a timely efficient manner.

Transition (Part 1)

It is our understanding that the proposed changes to the transition regulation (O. Reg. 174/16: "Transitional Matters – General") would set out rules for planning matters in-process at the time certain components of Schedule 12 to Bill 108 are proclaimed. Specifically, Bill 108 expands the grounds of appeal of a decision on an official plan/amendment or zoning by-law/amendment and allows the Local Planning Appeal Tribunal to make any land use planning decision the municipality or approval authority could have made. The proposed transition regulation provides that the expanded grounds of appeals and a return to a "de novo" system would apply to appeals of decisions and non-decisions that have not yet been scheduled for a hearing by the Local Planning Appeal Tribunal ("LPAT") regarding the merits of the matter before the Tribunal.

Based on this understanding the following comments aim to ensure that the proposed transition regulation changes provide for procedural fairness, timely resolution, and certainty regarding the disposition of planning matters that are in process.

Analysis

It is the City's position that where a municipality has made a land-use planning decision under an existing legislative regime that the transition policies regarding any appeal should

recognize the in-process nature of the development application and provide certainty by disposing of the matter under the legislative framework the decision was rendered. The transition that the Minister is proposing would result in inefficiencies and introduce a notable degree of unfairness as it changes the rules in the middle of the application process.

All parties to the matter, including the applicant, the public during consultation, staff in preparation of the staff report and Council have relied upon a specific test to come to a decision. To expand the parameters of that test so late in the process is unfair to all concerned and will create unnecessary uncertainty. Any application that has been deemed a complete application under the existing system should continue to be finally disposed of under that system.

The decision of council was informed and made under the in-force *Planning Act* provisions which existed on the date of the decision. It is our position that to retroactively alter and introduce new appeal tests mid-process would undermine the legitimacy of the public process under which Council made a decision. A change in the appeal grounds under Bill 108 where not contemplated by Council at the time a decision was made. Appellants that brought appeals forward under the previous regime (Bill 139) will have had their appeal vested in the Tribunal once a valid appeal was filed. Accordingly the appellants would have already anticipated that the Tribunal would hear the merits of the case based on a provincial conformity failure test. The fact that the appeal would have vested further raises concerns that the proposed transition policies do not take into account the orderly disposition of in-process appeals but rather seeks to introduce a revised appeal review standard by the Tribunal not envisioned by the parties to the appeal.

It appears that the intention of this element of the transition regulation is to capture as many in process applications as possible. We believe the number of cases to be affected by this issue to be relatively small, and therefore capturing them in this fashion will make no measurable impact to the number of units and timing of units being approved and built, but it will have a significant impact on procedural fairness to all parties involved.

Recommended*: It is recommended that the transition provisions provide that where council has made a decision and an appeal of that decision has vested with the Tribunal, the appeal shall be continued and disposed of under the Act as it read on June 5, 2019, regardless of whether the appeal has yet to be scheduled for a hearing by the LPAT regarding the merits of the matter before the Tribunal.*

Transition (Part 2)

The proposed transition policies also provide for the expanded grounds of appeal of a lack of decision on an official plan amendment or zoning by-law amendment. The Local Planning Appeal Tribunal will be able to make any land use planning decision the municipality or approval authority could have made for those appeals that have been

scheduled for a hearing by the Local Planning Appeal Tribunal regarding the merits of the matter.

Analysis

Notwithstanding that an approval authority or municipality failed to make a decision within the legislated timeline, the City believes (as above) that the proposed transition regulation should be amended to provide clarity and ensure that in-process appeals receive expeditious resolution under the planning framework they were commenced. Transition policies are intended to give consideration to matters that arose under the previous law, but which are still ongoing after the new law comes into force.

The City seeks the fair, just, and expeditious resolution of all appeals, and is also concerned about the efficient use of limited public resources. Appellants that brought appeals forward under the previous regime (Bill 139) will have had their appeal vested in the Tribunal once a valid appeal was filed. The appellants would have already anticipated that the Tribunal would hear the merits of the case based on a provincial conformity failure test notwithstanding there was no decision. The fact that the appeal would have vested and appeal and responding materials will have been drafted further raises concerns that the proposed transition policies do not take into account the orderly disposition of in-process appeals but rather seeks to introduce a revised appeal review standard by the Tribunal not envisioned by the parties to the appeal.

Recommendation: *It is recommended that the transition provisions provide that if any appeal made before the amendments to the Act come into force, the appeal shall be continued and disposed of under the Act as it read on the day prior to those amendments coming into force. This transition would ensure that there is a fair and expeditious resolution of these appeals.*

Transition (Part 3)

The proposed transition policies provide that the reduction for decision timelines on applications for official plan amendments (120 days), zoning by-law amendments (90 days, except where concurrent with official plan amendment for some proposals) and plans of subdivision (120 days) would apply to complete applications submitted after Royal Assent.

Analysis

The proposed transition for decision timelines that are retroactive to Royal Assent can lead to unintended consequences. Currently the reduced review timeline provisions in Bill 108 are not in force until a date to be proclaimed. However the proposed transition provisions would require municipalities to adhere to the legislated reduced timelines for complete applications before the provisions are proclaimed. As drafted the proposed transition

policies would require that the legislative changes contained in Bill 108 be complied with before it is in force and effect.

We do not believe that it was the intent of the province to require compliance before Bill 108 has been proclaimed and before the transition policies are adopted. If proclamation does not occur within 90 days of Royal Assent appeal rights could be triggered immediately upon proclamation. Further, as written, the retroactivity of the shortened timeframes to Royal Assent could place municipalities and development applicants in a position of having to apply the non-inforce legislative changes before the government ultimately determines how to proceed. Since the draft transition regulations are subject to change and the date of proclamation is unknown, the current draft policies disregard the authority of the legislature to make potential changes.

Recommendation: *To ensure that there is no contempt of the powers of the legislature, it is recommended that the transition provisions provide that the reduction for decision timelines apply to complete applications submitted after proclamation.*

Community Planning Permit System

The community planning permit system is a framework that combines and replaces the individual zoning, site plan and minor variance processes in an identified area with a single application and approval process. Schedule 12 to Bill 108 includes provisions to remove the ability to appeal the official plan policies required by regulation for the establishment of a community planning permit system when the Minister issues an order to require a local municipality to adopt or establish a system. To further facilitate the implementation of the system, a change is also proposed to the community planning permit regulation that would remove the ability to appeal the implementing by-law. This change would support the streamlining of development approvals in areas where the Minister required a community planning permit system to be established.

Analysis

We would like to commend the Province on introducing policies that would facilitate the use of the Community Planning Permit System (“CPPS”) where the Minister by order requires the system to be established. However the City is concerned with the non-discretionary authority to establish a community planning permit system by order of the Minister given that appeal rights have been eliminated in these circumstances. The elimination of appeal rights may be seen as a serious impact to the rights of individuals. Accordingly this authority should be balanced with policies which require the Ministry to consult with individuals and the public in the affected CPPS area.

Since the Minister is determining that a CPPS must be established in an area or areas, it would be unreasonable to require municipalities to defend the actions of the Minister and try to attribute a rationale for his or her actions. Notwithstanding the local municipality is in

the best position to develop the policies based on local characteristics and the community's vision, the Ministry should provide support to the municipality by directly conveying to the public the necessity and the rationale for imposing this system.

Recommendation: *It is recommended that the transition policies include a requirement on the Ministry to provide written notice to affected parties and individuals. The content of the notice should contain an explanation of the purpose and effect of the proposed decreed CPPS area. In addition the Ministry should assist the municipality in any necessary consultations to substantiate the introduction of the CPPS.*

Recommendation: *It is requested that in making a final decision on the CPPS that the regulation include a requirement for the Minister to consult with the municipality prior to the Minister's approval.*

General Comments Regarding Proclamation

Transition (Part 4)

Bill 108 is removing the alternative parkland rate and limiting the use of parkland base rate under Sections 42 (parkland) and 51 (plan of subdivision) of the *Planning Act*. As of proclamation of the Bill these tools will no longer be the primary funding sources for new parkland and park and recreational improvements to support development. The Province has made it clear that Growth should pay for Growth.

Analysis

The legislation only maintains the ability to secure the base rates of 2 per cent for commercial and industrial and 5 per cent for all other uses for park purposes if there is no CBC by-law in-force. Without a CBC by-law, the 2 and 5 per cent dedication requirements continue to be required to be set out in a by-law and the municipality determines if an application is providing land or cash in-lieu. However, the regulation which prescribes the maximum rate and other details have not yet been released and are required to fully understand whether the CBC is an effective replacement to the alternative requirement or Subsection 42(1). This is also particularly important to understand as the CBC will need to be used by the City to both acquire new lands for parks and recreation purposes, as well as to make improvements to existing parks to support growth.

To complicate matters, when proclamation occurs the current Sections 37 and 42 of the Planning Act become ultra vires and any associated by-laws would not have force and effect given that the their legal power or legislative authority has been removed. However we assume the Province has given thought to what occurs with Section 37 powers in the transition to community benefits charge because Bill 108 states that Section 37 continues to apply until a community benefit charge by-law is in place. No such transition provision

exists for Section 42 alternative park rate policies. The effect of this drafting is that once Section 42 is repealed upon proclamation municipalities will not be able to collect alternative rate parkland fees until a community benefits charge by-law is in place. This will not result in a financial neutral outcome for municipalities, and to this end, Bill 108 moves away from the Province's stated 'growth pays for growth' objective as municipalities will only have the ability to secure the *Planning Act*'s base rate for residential developments that did not have a by-law passed prior to the effective date.

Recommendation: *It is recommended that the transition regulation defer proclamation of the Section 42 policies in Bill 108 until such time that a municipality has adopted a community benefits charge by-law. Transition provisions are important if the Province wants municipalities to be able to maintain historical revenues. This change would ensure that existing tools to allow growth to pay for growth can be utilized until a municipality had done the necessary work to transition to a community benefits charge framework.*

In conclusion, the City would like to thank the province for providing an opportunity to comment on the proposed content of the new regulation and regulation changes under the Planning Act (ERO number 019-0181). We would also like to note that the City will be submitting separate submissions on the other proposed regulations to be issued under Bill 108. As a number of details have yet to be finalized by the Province, we look forward to further engagement on these matters.

Sincerely,

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