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The Regional Municipality of Durham Report

To: Planning and Economic Development Committee
From: Commissioner of Planning and Economic Development
Report: #2023-P-22
Date: September 5, 2023

Subject:

Bill 23 Update: Delegation of Durham Region Land Division Responsibilities

Recommendation:

That the Planning and Economic Development Committee recommends to Regional Council:

- A) That the Regional Solicitor be authorized to present a By-law under Section 54 of the Planning Act delegating to the Council of each of the Region's area municipalities, the authority to grant consents, and that this by-law be passed by Council at its meeting on October 25, 2023;
 - B) That By-laws 07-2023 and 09-2023, authorizing appointments to the Regional Land Division Committee be repealed effective December 31, 2023;
 - C) That the area municipalities be requested to pass a by-law to expand the role of their Committees of Adjustment to include Consent applications effective January 1, 2024;
 - D) That a copy of this report be provided to the Regional Land Division Committee, and each of the Region's area municipalities; and
 - E) That at the appropriate time, the Chair of the Land Division Committee and all Committee Members be thanked for their contributions and service to the Region.
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Report:**1. Background and Purpose**

- 1.1 On October 25, 2022, the province tabled Bill 23 which introduced fundamental changes to the land use planning system in Ontario through legislative amendments to the Planning Act, the Conservation Authorities Act, the Development Charges Act and other pieces of legislation. The Bill implemented the “More Homes, Built Faster: Ontario’s Housing Supply Action Plan 2022-2023”, which is intended to advance the government’s goal of getting 1.5 million homes built across Ontario over the next 10 years.
- 1.2 Bill 23 achieved Royal Assent on November 28, 2022. Proclamation of certain aspects of Bill 23 pertaining to a number of Planning Act amendments has not yet occurred. A proclamation date is not known at this time, nor is it known if further changes to the Bill may be forthcoming.
- 1.3 Pursuant to Bill 97, the “Helping Homebuyers, Protecting Tenants Act” which was introduced on April 6, 2023, Provincial Facilitators are expected to be assigned by the Minister of Municipal Affairs and Housing to undertake an assessment of Regional programs and services, and it is possible this process may result in further changes to the Region’s land use planning environment.
- 1.4 Under Bill 23, the Region of Durham and the six other regional governments were defined as “Upper-Tier Municipalities without Planning Responsibilities”. If this aspect of Bill 23 is proclaimed as drafted, it would mean that:
 - a. The Regional Official Plan would become the official plan for the lower-tier municipalities who could repeal or amend it. The new Regional Official Plan (“Envision Durham”) was adopted by Regional Council on May 17, 2023 and was immediately forwarded to the Ministry of Municipal Affairs and Housing for approval. It is unknown when the Minister will make a decision on the new Regional OP, but once approved it will not be subject to appeal;
 - b. Local municipalities will assume approval authority for all Planning Act decisions, except official plans and official plan amendments, which will need Ministerial approval. The Minister’s decision would not be subject to appeal; and
 - c. Local municipalities will have approval authority over subdivisions, condominiums, land division, and part lot control exemptions. Commenting responsibilities on all land use planning applications and related matters will continue to be performed by the Region. With regard to subdivision, condominium and part-lot control exemption approval, the Region’s approval

authority was delegated to the five lakeshore municipalities in 2000. In the north, however, upon proclamation of Bill 23, the townships would be required to assume the approval responsibilities for subdivisions, condominiums and part-lot control exemption by-laws. Regional planning staff could provide assistance if needed, through a service agreement.

- 1.5 The purpose of this report is to provide an update on planning matters pertaining to Bill 23, and also to recommend the transfer of approval responsibilities for consent (Land Division) applications to the Region's area municipalities effective January 1, 2024.

2. Land Division (Consent) Responsibilities

- 2.1 "Consent" is the term used in the Planning Act when referring to the creation of new lots (i.e. severances), lot line adjustments, easements, rights-of-way, and permission for mortgaging or leasing parts of lots for more than 21 years. The Planning Act requires approval of a consent application through a Land Division Committee or a Committee of Adjustment (CofA).
- 2.2 In 1974, Regional Council delegated the authority for the granting of consents to the Regional Land Division Committee. The Commissioner of Planning and Economic Development also has delegated authority for consents under By-law 29-2020.
- 2.3 Since 1974, the Regional Land Division Committee has provided efficient, effective and consistent service across the Region through economies of scale. Durham is unique within the GGH whereby Land Division responsibilities are assumed by the Regional Land Division Committee with representation from each area municipality. In other jurisdictions in the GTHA, consent responsibilities are assumed by local Committees of Adjustment, with minor variances and related consent applications considered concurrently.
- 2.4 Regional Planning Division staff currently provide administrative support and technical advice to the Regional Land Division Committee through the Secretary-Treasurer and the Assistant Secretary-Treasurer. These duties currently include:
 - a. Assisting landowners and agents in submitting consent applications and administering the consent process in accordance with the provisions of the Planning Act;
 - b. Scheduling of public meetings, giving Notice of Hearings, preparing and circulating meeting agendas and materials, taking minutes, recording decisions, processing appeals, overseeing clearance of conditions and issuing consent certificates (stamping deeds); and

- c. Providing liaison among commenting agencies, the public, applicants, agents and others involved in the process.
- 2.5 Planning Division staff review consent applications and provides the Land Division Committee with an assessment of the application's conformity with Regional and provincial policy, to assist the Committee in making its decision.
- 2.6 If proclaimed as proposed, Bill 23 will remove the Region's consent granting authorities. Given the current legislative and operational circumstances, it is appropriate that the Regional Land Division responsibilities be delegated to the Region's area municipalities at this time. The Region's area municipalities have advised that they are equipped to assume the role. As well, some of the existing Land Division Committee members were appointed from area municipal Committees of Adjustment. These appointments were made, in part, to enable knowledge sharing once the responsibilities are assumed by the area municipal CofAs.
- 2.7 Under Section 54 of the Planning Act, the Council of an upper-tier municipality may by by-law delegate to the Council of a lower-tier municipality, the authority for the giving of consents under Section 53 in respect of land situated in the lower-tier municipality.

3. Land Division Transition Planning

- 3.1 On June 9, 2023, Regional Planning staff met with planning staff from the eight area municipalities to discuss Bill 23 and related transition matters. With a focus on Land Division, it was discussed that adequate time is required to allow for training, data and file transfer, notification, the passage of the requisite by-laws and other administrative tasks so that there can be an orderly transition of responsibilities. To allow time for planning and preparation, it is recommended that Durham Region Land Division Committee convene its final meeting in December, 2023. Local Committees of Adjustment will be in a position to consider new consent applications at their regularly scheduled meetings commencing as early as January, 2024.
- 3.2 The last day for accepting applications to the Region's Land Division Committee will be October 20, 2023. New applications for consent will need to be filed with the area municipality commencing on December 1, 2023. This date will allow the area municipalities the time needed to process applications and provide notice for their subsequent Committee of Adjustment meeting cycles commencing in January, 2024.

- 3.3 In March, 2023 Regional Council adopted By-laws 07-2023 and 09-2023 to appoint the Land Division Committee for the Region. It is necessary to repeal the by-laws and rescind the current appointments to the Land Division Committee prior to the local Committees of Adjustment assuming their expanded roles. The By-laws will be presented at the October 2023 Regional Council meeting.
- 3.4 Through the month of November, staff will transfer various documents to each of the area municipalities including sample letter templates, forms and standard notices, etc. Regional planning staff will provide training and support to area municipal staff commencing in October 2023, and then to Committee of Adjustment members. Regional staff will be available for ongoing support should any questions arise through the transition period.
- 3.5 Public notification of the process changes will be provided on the Regional website and through recurring public service announcements.
- 3.6 It is recommended that Regional Planning continue to process existing open files filed with Land Division Committee to enable clearance of conditions of existing severances for a period of up to two years until all active files have been cleared, or existing conditions have lapsed. Retention of existing active files during this transition period will allow applicants to continue under existing Regional processes for clearing conditions and approval of final plans.
- 3.7 It is also recommended that as of January 1, 2024, new consent applications be considered by the local Committees of Adjustment. The conditions imposed locally would then be cleared by the local municipalities. It is anticipated that consent activity will be approximately two applications per month, per municipality.
- 3.8 In support of the transition, area municipalities will need to post information regarding the new process, application timelines, deadlines for filing of applications; Public Notices for new consent applications; Notices of Decision; and instructions for filing of appeals.
- 3.9 To enable the transfer of responsibilities, it is recommended that Regional Council enact a by-law delegating land division responsibilities to the area municipalities under Section 53 of the Planning Act. Area municipal Councils would then have the authority to further delegate these responsibilities to their respective Committees of Adjustment.

4. Activities of the Regional Planning Division Post Bill 23

- 4.1 Bill 23 made a series of changes to the Development Charges Act, the Conservation Authorities Act and other pieces of legislation. However, the Planning Act related

components of Bill 23 that affect the planning responsibilities of upper tier municipalities have yet to be proclaimed. Until proclamation has occurred (at a date still to be determined), the Region's planning function generally remains unchanged.

- 4.2 The Region's role in infrastructure and service planning is to ensure that growth-related infrastructure is planned, prioritized, funded and in place to support new development. Decisions to invest in infrastructure and services are based on the coordination of planning permissions, an integrated approach to long range infrastructure planning, and capital financing so that required water, sewer, roads and other infrastructure and services will be available to enable new housing construction.
- 4.3 The new Regional Official Plan (Envision Durham) was adopted by Regional Council on May 17, 2023. The Regional Official Plan provides the policies and designations to guide the near doubling of Regional growth to a population of 1.3 million residents and 460,000 jobs by 2051. Dramatically accelerated levels of growth will occur through intensification and infill, transit-oriented development, on vacant urban area lands, redevelopment and within new communities within the Region's eight area municipalities. The Region's five lakeshore municipalities have been identified as "Large and Fast Growing Municipalities" and have adopted housing pledges that support accelerated growth in keeping with provincial housing objectives.
- 4.4 To ready the Region for significant and long-term development activity, infrastructure planning, servicing and housing development, the following initiatives are anticipated:
 - a. Following the approval of the new Regional Official Plan by the Minister of Municipal Affairs and Housing, detailed land use and development forecasting is required to inform Regional infrastructure and servicing master plans and subsequent development charge background studies to guide long term capital investment. Ongoing monitoring, analysis, forecasting and reporting on region-wide development, land use, transportation and demographic trends will inform decisions on infrastructure needs.
 - b. Significant work is necessary to support long-term transportation planning to ready the Region for forecasted levels of growth through transportation modelling, impact analysis and through an update to the Transportation Master Plan. Key transportation initiatives are currently underway in support of the GO East extension, active and sustainable mobility initiatives, high frequency rail, freight and goods movement and transit-oriented development initiatives.

- c. There is an urgent need to expedite affordable housing delivery. Ongoing work through the Affordable Housing Incentive Program, and through collaboration with Housing Services to expedite new development on Regionally owned sites is underway. Planning expertise in support of new development, meetings with stakeholders, identifying issues, developing strategies, and by informing plans and programs will enable positive change on existing sites.
- d. Following proclamation of the applicable portions of Bill 23, Regional planning staff will continue to:
- provide one-window responses to development applications, area municipal plans and studies, proposals from external agencies and initiatives from other levels of government that affect the Region's interest in land, development, services or infrastructure. Timely responses will ensure the area municipalities and development stakeholders can meet legislated timelines. Where applicable, ongoing support will be provided for Regional initiatives which advance environmental stewardship, sustainability, climate change mitigation and adaptation. Opportunities to coordinate plan review responsibilities in consultation with the conservation authorities are also being explored.
 - undertake provincial plan review responsibilities (i.e. review of noise impact studies, administer soil and groundwater contamination reviews, evaluate proposals for land use compatibility/distance separation requirements, and identify applications with archaeological potential).
 - Coordinate and provide subject matter expertise for Regional Advisory Committees, including Durham Environment and Climate Change Advisory Committee, Durham Active Transportation Committee and the Durham Agricultural Advisory Committee.
 - Participate development related committees (Secondary Plan steering committees, area municipal preconsultation meetings, etc.)
 - Respond to developments, plans and proposals within designated Wellhead Protection Areas.
 - Comment on various plans/initiatives/studies or applications:
 - (a) within neighbouring municipalities up to 1 km from Durham's boundaries;
 - (b) within 1 km of sewage treatment plants, waste management facilities or other Regional infrastructure where there is a land use compatibility risk;
 - (c) third party infrastructure proposals (Hydro One, Enbridge Gas, Transnorthern Pipelines, Elexicon, etc.) and coordination of comments on changes to linear infrastructure proposed by utility providers and radio and cell tower proposals filed by telecommunications providers;

- (d) on provincial Certificate of Approval applications; and
- (e) on Aggregate licensing applications.
- Review and approve Good Forestry Practices and Clear-Cutting Permit requests under the Regional Woodland By-law.
- Undertake Soil and Groundwater Protocol administration to ensure soil and groundwater contamination matters have been addressed.
- Municipal street naming responsibilities.
- Update and administer of the Region's Woodland By-law enforcement consultant and the Region's Peer Review Rosters for Hydrogeological and Soil and Groundwater Consultants.
- Respond to internal processes, including comments on the sale of surplus lands from the Region or municipalities, processing of MFIPPA requests, and requests under the Retail Holiday Business Act for changes to hours of operation.
- Provide evidence/materials for OLT Hearings or other Tribunals for planning related hearings, presentations at Committees and Council for development related planning matters that involve a Regional interest.
- Support the conduct of the Annual Business Count being led by the GIS and Visualization section, including the collection, maintenance and analysis of employment related data.
- Lead, participate in, and support Regional redevelopment/regeneration initiatives for new affordable and supportive housing:
 - (a) Provide land use planning, design and program guidance as part of the redevelopment of Regionally-owned and DRLHC owned lands;
 - (b) Provide land use planning services, including for initial due diligence exercises and in support of project advancement;
 - (c) Prepare materials, by-laws, regulations or land use policies in support of development applications; and
 - (d) Prepare Planning Rationale Reports to approval authorities.
- Lead planning related GIS capabilities and geographic data to enable reporting on development and land related geographic information to enable informed decision making by internal departments, area municipalities, businesses, stakeholders and the public in a variety of land use related fields.
- Apply development data for Built-up Areas, Strategic Growth Areas, Employment Areas and Settlement Area Expansions to enable tracking of intensification, densities and land consumption in light of provincially mandated growth targets.

- e. Coordinate comments on transportation related projects, policies, plans and initiatives, including:
 - Analysis and comment on traffic impact studies submitted in support of development applications; area municipal and Region-led Class EA studies; local secondary plans; corridor improvement studies.
 - road widenings or reconstruction projects, provincial highway Class EAs, and liaising with Works and DRT on comments.
- f. Develop, update, monitor and implement the Regional Cycling Plan, including leading AT network planning, prioritization/phasing, monitoring/reporting, support for budget forecasting, seeking funding opportunities by preparing grant applications, coordinating AT facility design, identifying opportunities for AT integration in road improvement capital projects, and leading discussions with MTO, area municipalities and CAs on coordination as applicable.
- g. Develop, maintain, update and utilize transportation related data, to enable forecasting, modelling and monitoring to inform responses to development applications, studies, plans and initiatives:
 - the Walking Network Database to inform walkshed analysis, cycling network connectivity analysis, routing for Active and Safe Routes to School, monitoring priority neighbourhoods for food security, KPI tracking for walkability, etc;
 - the Durham Region Transportation Planning Model (DRTPM) to undertake traffic modelling based land use forecasts, Class EA studies, area municipal secondary plans, third party requests (developers), support for Finance, Works and DRT for DC Background Studies; and
 - Traffic forecasts and database maintenance for Noise Impact Studies for use by acoustic consultants as part of development applications.
- h. Participate in the Transportation Tomorrow Survey (TTS), the Regional Cordon Count Program, the MTO Travel Time Study, Census place of work data and Smart Freight Centre.
- i. Continue to elevate the importance of active transportation, promote reducing car dependency and advance active and sustainable modes of travel by:
 - Advancing initiatives under Smart Mobility Durham (Smart Commute Durham, Cycle Durham, Active and Sustainable School Travel Plans, and Carpool Lots/Small Urban and Rural Carpool Lots);
 - Developing and maintaining the Cycle Durham Mapviewer to plan, monitor and report on the progress of cycling infrastructure;
 - Representing the Region on external committees/working groups to build support for local and regional data collection methods and infrastructure projects;
 - Leading and coordinating TDM policies and initiatives; and

- Liaising, supporting and advancing projects and initiatives with the TOC Office.
- j. Lead the Freight and Goods Movement Strategy to advance initiatives that support the Region's long-term employment growth.
- k. Develop Implementation Guidelines and Best Practices studies and approaches to inform Regional transportation related priorities, programs and policies.
- l. Update the Arterial Corridor Guidelines in consultation with the Works Department.
- m. Update the Transit Oriented Development Guidelines to support walkable and sustainable place-making within MTSAs and other Strategic Growth Areas.
- n. Acquire data and develop new planning related data sets through a variety of means including digitization, acquisition from third party sources, use of Global Positioning Systems, data sharing, use of remotely sensed data and acquisition from other reputable sources:
 - Identify opportunities for use of data by external customers (including area municipalities, businesses, user groups, stakeholders or the general public) as opportunities arise;
 - Improve harmonization and data sharing as opportunities arise;
 - Support open data initiatives through web-based applications; and
 - Ensure data currency, timeliness and quality.
- o. Support, develop and advance the Region's reporting on planning related data, including:
 - Key Performance Indicators within the Strategic Plan on employment characteristics, land supply for housing, development densities, agricultural land, environmental features, land consumption or other factors; and
 - Public facing interactive GIS mapping tools, dashboards, viewers and data aggregation to support use by the public, stakeholders, area municipalities, industries and others (including area demographics, labour force, land use permissions, availability of development sites, site attributes, location of services, physical features, etc.)
- p. Lead, conduct and ensure accuracy of the Region's Annual Business Count by:
 - ensuring completion and accuracy of survey data through the hiring of students, coaching support services; and
 - ensuring integrity of data on Regional employment and business characteristics to enable analysis of Regional employment characteristics.

- q. Produce mapping, graphics, and data products used by the Department, other Regional Departments, external stakeholders, agencies, area municipalities and the public.
- r. The Planning Division will continue to support the work of the Economic Development and Tourism Division through data collection, policy development, reporting, mapping and measures that continue to preserve and support the agricultural land base.
- s. A draft Planning Services Agreement has been prepared and was discussed with area municipal planning staff in June of 2023. Should an area municipality require or request development related planning advice, assistance, services or expertise due to peaks in activity that may be experienced from time to time, Regional planning staff could be contracted to provide support similar to the way other Regional supports are provided in areas of human resources, IT and legal. It is expected that the northern townships may require Regional planning support, moreso than the southern municipalities, depending on the future volumes of planning and development activity.

5. Previous Reports and Decisions

- 5.1 The implications of Bill 23 on the Region of Durham was presented through Report [#2022-COW-33](#).

6. Relationship to Strategic Plan

- 6.1 This report aligns with the Strategic Goal of Service Excellence in the Durham Region Strategic Plan and the following priorities:
 - a. 5.1: Optimizing resources and partnerships to deliver exceptional quality services and value: by ensuring capacity and training are provided and available for consent applications; and
 - b. 5.2 Collaborating for a seamless service experience: by ensuring that training, materials, time and communication are provided so that existing and future land division applicants are aware of process changes.

7. Conclusion

- 7.1 The delegation of consent authority to the Region's area municipal Committees of Adjustment is consistent with other jurisdictions across the GGH. A transition framework has been recommended to allow for training, orderly file transfer, communications and service continuity for our customers.

7.2 Staff will report on any Bill 23 related matters and any correspondence from the Ministry of Municipal Affairs and Housing on the approval of the Regional Official Plan as information becomes available.

Respectfully submitted,

Original signed by

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Commissioner of Planning and
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Recommended for Presentation to Committee

Original signed by

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