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DATE: February 14, 2006

SUBJECT: **PLANNING POLICY AND RESEARCH**  
**POSITION OF THE REGION OF PEEL ON BILL 51 - AN ACT TO AMEND THE**  
**PLANNING ACT AND THE CONSERVATION LAND ACT, AND**  
**TO MAKE RELATED AMENDMENTS TO OTHER ACTS**

FROM: Nick Tunnacliffe, Commissioner of Planning  
Kent Gillespie; Commissioner of Corporate Services and Regional Solicitor

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### RECOMMENDATION

That the joint report of the Commissioners of Planning and Corporate Services and Regional Solicitor, dated February 14, 2006, titled "Position of the Region of Peel on Bill 51 – An Act to Amend the *Planning Act* and the *Conservation Land Act* and to Make Related Amendments to Other Acts" be endorsed as the comments of the Region of Peel on Bill 51;

And further, that the subject report be forwarded to the Minister of Municipal Affairs and Housing as the position of the Region of Peel on Bill 51;

And further, that the subject report be forwarded to the Provincial Ministers of Transportation and Public Infrastructure Renewal; the Town of Caledon; the Cities of Mississauga, Brampton, Toronto and Hamilton; the Regional Municipalities of Durham, York and Halton; and the Association of Municipalities of Ontario (AMO), for their information.

### REPORT HIGHLIGHTS

- On December 12, 2005, the Minister of Municipal Affairs and Housing introduced Bill 51 (the Bill) - An Act to Amend the *Planning Act* and the *Conservation Land Act* and to make related Amendments to other Acts for first reading.
- The amendments are intended to clarify planning rules and processes, and simultaneously support a more effective public process for planning activities in Ontario.
- Regional Planning and Legal staff have consulted with area municipal counterparts, including TAC members, and the conservation authorities on the Bill and this report.
- The amendments implement the commitment of the Province to sustainable development, public transit, pedestrianisation, and intensification.
- Amendments relating to synchronisation with provincial plans and policies, Ontario Municipal Board reform, and employment lands protection are supported.
- Bill 51 is a significant step towards reforming the Ontario *Planning Act*.
- Reform of the Ontario Municipal Board to achieve a Board that truly functions as an appeal body, rather than as a substitute decision maker, has not yet been achieved.

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- Clarification is required for a number of areas including the Regulations for implementing the amendments, the introduction of new information, community improvement plans, and the definition of employment areas.
- The timing of official plan reviews and zoning by-law updates, and local appeal bodies are areas of concern.
- Official plan content, transit-enabling legislation, and expansion of the cash-in-lieu provisions are further areas that must be addressed through amendments to Bill 51.

**DISCUSSION**

**1. Background**

On December 12, 2005, the Minister of Municipal Affairs and Housing (MMAH) introduced Bill 51 - An Act to amend the *Planning Act* and the *Conservation Land Act* and to make related amendments to other Acts, into the provincial legislature for first reading. The majority of reforms apply to the *Planning Act*, however, amendments to other Acts are proposed, including the *Conservation Land Act*, the *Conveyancing and Law of Property Act*, the *Greenbelt Act, 2005*, the *Land Titles Act*, and the *Municipal Act, 2001*. A summary of the Bill is attached as Appendix I.

Bill 51 is one in a series of complementary and related provincial initiatives designed to change the planning system in Ontario. Other provincial initiatives include the Provincial Policy Statement, 2005, the Greenbelt Plan and Act, and the Places to Grow Draft Plan and Act. Specifically, Bill 51 is intended to clarify planning rules and processes, implement provincial policies and municipal priorities, and support a more effective public process for planning Ontario communities. Bill 51 is not yet law, and is subject to amendment before coming into force. Bill 51 has been posted on the Environmental Bill of Rights Registry (EBR) for comment. The commenting deadline on the first reading of the Bill is February 26, 2006.

**2. Consultation**

Regional Planning and Legal staff met with area municipal Legal and Planning staff, as well as conservation authority staff to discuss the intent and implications of the Bill on our respective planning activities. There was consensus on the merits of the proposed legislation, areas requiring clarification, and areas of concern. Notes from the meeting, which was held on Friday, January 13, 2006, are attached as Appendix II to this report. On January 25, Regional Planning staff met with members of the Technical Advisory Committee (TAC) to discuss the Bill and to obtain area municipal input on the Regional report on the Bill. The Region of Peel report was also circulated to TAC members for their review and comment.

This report reflects the discussions of the January 13 joint regional and area municipal consultation, the January 25 TAC meeting, and comments from TAC members on their review of the Region of Peel staff report. The report also includes comments on areas that remain unaddressed in this recent round of planning reforms. Planning staff met separately with the Toronto and Region Conservation Authority (TRCA) on January 9 to obtain their input on the Bill.

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Planning staff have contacted representatives of the development industry regarding Bill 51. The development industry met on February 8 to discuss the Bill and their comments will be available in the near future.

### **3. Supported Amendments**

Regional, area municipal, and conservation authority staff commend the Province on its most recent work on planning reform. The Province must be commended for supporting local autonomy through its recognition of municipal priorities and decision-making, and for its initiative in clarifying planning rules and processes. Amendments to the OMB are welcomed, particularly with regard to the need to respect local decision-making, the introduction of new information, the restriction of appeal rights, and the ability to identify information and material needed in support of applications for official plan amendments.

Bill 51 illustrates the commitment of the Province to intensification and realisation of its vision as contained in the Places To Grow Draft Plan, and is a first and necessary step. Expanding matters of Provincial Interest to promote sustainable development and support public transit and pedestrianisation are significant amendments. Having municipal decisions conform to and be consistent with provincial plans and policies that are in effect at the time of decisions on development applications, rather than at the time of original application, is supported. Protection for employment lands and the ability to allow second suites without appeal to the OMB is a significant and positive direction for the Province to take.

For the first time municipalities will be able, through site plan control, to influence the design and character of developments, and through zoning, to influence minimum heights and densities to facilitate intensification objectives. The complementary ability for municipalities to impose conditions on zoning for parking, traffic, and urban design is especially supported. The ability to influence urban form could also be achieved through the ability of the approval authority to require the dedication of pedestrian and bicycle pathways, and public transit rights-of-way. The latter would tie into many healthy city initiatives in the Region, including that of the Mississauga Healthy City Stewardship Centre.

The ability for municipalities to pre-consult on development applications would provide the opportunity to communicate municipal objectives with the proponents, with an eye to influencing development applications. Provisions for upper-tier municipalities to participate in Community Improvement Plans is a positive step, particularly as it could serve as a catalyst for redevelopment initiatives. Proposed amendments to the *Conservation Lands Act* are applauded, particularly on the ability to secure land through easements or covenants for conservation purposes including source water and watershed protection and related management.

### **4. Areas Requiring Clarification**

Clarity is required in a number of areas to assist municipal interpretation of the intent, as well as the administration of the proposed planning amendments. These areas pertain to the Regulations to guide municipal implementation of the Bill, dedication of pedestrian and bicycle pathways and public transit rights-of-way, notice requirements for public open houses, OMB appeals with the need to "have regard to" municipal decisions, the provision of new information at Board hearings, definition of area of employment, and community improvement plans. Also, the added value between the proposed amendment for conditional

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zoning and the current ability for municipalities to designate holding zones is unclear. A description of these areas is contained in Appendix III.

**5. Areas of Concern**

A number of areas in the Bill pose concern. These areas include the timing requirements for official plan reviews and zoning by-law updates, the ability to designate and zone for second suites, the establishment of local appeal bodies, undertakings relating to energy, and conservation easements. A description of these areas is contained in Appendix IV.

**6. Suggested Areas for Inclusion**

The Region of Peel has previously submitted comments on planning reform and a number of areas remain unaddressed in this latest round. The provincial government is asked to consider the merits of the ensuing items for inclusion in the second reading version of Bill 51. These suggested areas include broadening the contents of official plans to include human services, amending the *Planning Act* so that appeals to the OMB for official plan amendments that implement on provincial plans (eg. Growth Plans) be denied similar to what was done with the Oak Ridges Moraine, applying conditions such as inclusionary zoning, enhancing the provincial role/interest, financial and tax incentive programmes, transit enabling legislation, expanding the cash-in-lieu provisions to include public transit, transportation demand management, and affordable housing, OMB reform with regard to de novo hearings, strengthening roles of upper-tiers to consult with proponents, and extending the development permit system to all municipalities in the Province. A description of these areas is contained in Appendix V.

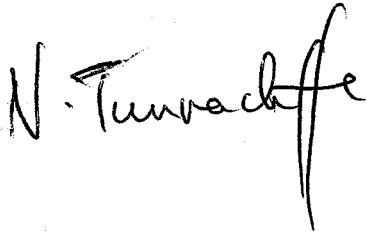
**CONCLUSION**

Since 2004, the Provincial government has been engaging in planning reform. The amendments contained in Bill 51 are significant and will greatly influence the ability of a municipality to achieve its own goals and objectives, in addition to the provincial ones. The Region encourages the Province to continue this trend of planning reform. Its support for intensification is commendable, however, there must be similar and complementary legislation for public transit if the potential of the urban growth centres is to be realised. The Province must provide some clarity in the Bill and give due consideration to other areas that have not been addressed in the first reading. The Regional Liveable Peel initiative will benefit from these amendments to the *Planning Act*.

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Nick Tunnacliffe  
Commissioner of Planning



R. Kent Gillespie  
Commissioner of Corporate Services

**Approved for Submission:**



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D. Szwarc, Acting Chief Administrative Officer

*Authored By: Gena Ali and Bruce Banting*

c. Legislative Services

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**Background**

The provincial government introduced Bill 51 into the provincial legislature on December 12, 2005 for first reading. The majority of reforms apply to the *Planning Act*, however, amendments to other Acts are made, including the *Conservation Land Act*, the *Conveyancing and Law of Property Act*, the *Greenbelt Act 2005*, the *Land Titles Act*, and the *Municipal Act, 2001*.

Bill 51 is one in a series of complementary and related provincial initiatives designed to change the land use planning system in Ontario. Other provincial initiatives include the Provincial Policy Statement, 2005, the Greenbelt Plan and Act, and the Places to Grow Draft Plan and Act. Specifically, Bill 51 is intended to clarify planning rules and processes, implement provincial policies and municipal priorities, and support a more effective public process for planning Ontario communities. Bill 51 is not yet law, and is subject to amendment before coming into force.

**Bill 51- Key Proposed Changes**

**Matters of Provincial Interest**

Bill 51 proposes to expand matters of Provincial Interest to include the promotion of developments that are sustainable, supportive of public transit, and oriented to pedestrians. Municipal councils and the Ontario Municipal Board (OMB) must have regard for these elements in deliberating planning decisions.

**Impact on Municipal Planning Decisions**

Municipal planning decisions would be required to be consistent with provincial policy statements and conform with provincial plans that are in force on the date of the decision or comments, as opposed to those in place at the time of application. This requirement does not extend to official plans or other types of policy. Bill 51 also proposes to require municipal decisions to have regard to the supporting information and material that was considered in making decisions. Also, the proposed Bill supports municipal planning decisions by requiring approval authorities such as the OMB to have regard to such in their decision-making on the same planning matters.

**Official Plans**

The Bill proposes to require that official plans be up-dated to conform to and not conflict with, current provincial plans and be consistent with provincial policy statements, and have regard to matters of Provincial Interest. Zoning by-laws must also be updated within three years of completing or revising official plans.

In updating official plans, municipalities must ensure that policies for employment areas are confirmed or amended. Bill 51 also requires municipalities to increase the level of public consultation, in terms of notification, consultation, and public participation, during the development of their official plans. For the first time, official plans may permit the creation of second units (eg. basement apartments) as-of-right in single-family detached

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dwellings, semi-detached dwellings, or townhouses. Policies on second units would not be appealable to the OMB, except at the five-year comprehensive official plan review.

**Improved Planning Tools**

By and large, the proposed reforms are aimed at achieving intensification and compact urban form. The majority of these reforms apply to local municipalities.

**Additional Information**

Through official plans, municipalities would have the ability to specify additional information requirements or materials (eg. site servicing analysis) in support of applications for official plan and zoning by-law amendments, plans of subdivision, and consents. In so doing, a municipality does not have to review an application until all information is provided. As well, appeals to the OMB cannot occur before this time.

**Zoning**

Proposed reforms include giving municipalities the flexibility to regulate densities and height by specifying minimums and maximums, and imposing conditions on zoning by-law amendments provided official plan policies accommodate this. The zoning condition would have to be prescribed by ministerial regulation. Additionally, the Bill would allow municipalities to refuse proposals to convert employment lands into other uses, with no right of appeal to the OMB, except at the time of a comprehensive official plan review.

**Pre-consultation**

Municipalities would be allowed to pass by-laws requiring pre-consultation on official plan and zoning by-law amendment applications and plans of sub-division before filing the application. Regardless of whether such consultation is required, municipalities must permit it.

**Architectural and Sustainable Design**

Architectural and sustainable design also benefit from improved planning tools. Through official plan policies, municipalities could consider the exterior design of buildings by allowing consideration of the character, scale, and appearance of the proposed buildings in relation to the surrounding environment.

Sustainable design is also a key feature in supporting intensification and compact urban form. To this end, municipalities could ensure that sustainable design applies to actual design, layout, and servicing of new subdivisions to include energy conservation. Site plan controls could influence green roofs and solar panels, the preservation of on-site vegetation and water-conserving landscaping.

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**Required Dedications**

Municipalities would be allowed to impose conditions of subdivision requiring the dedication of pedestrian and bicycle paths, and public transit rights-of-way.

**OMB Reform**

The amendments are intended to make the Board more effective, transparent, and user-friendly. The main body of this report raises concerns with the adequacy of the Bill regarding OMB Reform.

**Returning Local Autonomy**

The Board would be required to have regard to municipal council decisions on matters before the Board for decision making.

**New Information**

The practice of introducing new information in the appeal process would be denied, unless it could not have been reasonably provided to the municipality before Council's decision. However, if the OMB determines that the new information could have caused Council to decide differently, it could send the new information back to Council for reconsideration. This restriction only applies to private parties, and not the public sector.

**Restricting Appeal Rights**

The proposed reforms restrict some appeal rights that are currently enjoyed. For instance, only parties that commented during the official plan process could appeal the decision to the Board. The Bill also denies appeals of the refusal or failure to adopt or approve applications to amend employment land conversions by a municipality, establish new settlement areas, and boundary alterations. Reforms would also enhance the authority of the OMB to dismiss appeals in certain instances, such as repeat applications.

The Bill proposes to protect a municipality's ability to establish second suites as-of-right in official plans, by denying appeals to the Board. The second unit policies of a municipality can only be referred to the Board at the time of the five-year comprehensive review.

The Board has final determination, and its decisions would neither be appealable or reviewable. The restriction of appeal rights also extend to official plan amendments.

The powers of the OMB to determine appeals of Ministerial Zoning Orders would be restricted if the Minister deems that such would negatively impact on provincial interest. The final determination would be then made by the Lieutenant Governor in Council.

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**Local Appeal Bodies**

Bill 51 proposes to allow municipalities to establish local appeal bodies, effectively replacing the OMB for purely local matters such as minor variances and severances. Membership would include local citizens, excluding municipal employees or council members. The Province would prescribe minimum criteria for their establishment. Matters affecting the broader public interest would be heard at the OMB. Should a municipality decide not to establish a local appeal body, then all matters would be heard by the OMB.

**Community Improvement Plans**

The Community Improvement Plans are intended to support intensification and compact urban forms by encouraging and stimulating community improvement activities such as brownfields redevelopment. Bill 51 proposes to expand the scope of community improvement plans, and expands the definition of "community improvement" to include construction, the improvement of energy efficiency, as well as structures other than buildings.

Upper-tier municipalities would also be allowed to establish community improvement plans for limited purposes or "prescribed matters" such as inter-regional transit corridors. It would also allow upper-tier municipalities to participate in lower-tier community improvement grant or loan programmes, and vice versa, thereby enabling private-sector development activities to be stimulated.

**Conservation Easements and Covenants**

Conservation easements and covenants have been strengthened to include protection of water quality and quantity, and watershed protection and management.

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**BILL 51 Regional and Area Municipal Consultation Meeting Notes**

January 13, 2006  
10 Peel Centre Drive  
5<sup>th</sup> Floor Council Lounge  
2.00pm to 4.00pm

Attendees: Ron Miller, Geoff Smith, Lesley Pavan, and Michal Minkowski (Mississauga), Adrian Smith and Kathy Ash (Brampton), Heather Konefat and David Ostler (Caledon), Gary Murphy and Eric Baldin (CVC), and Bryan Hill, Lou Spittal, Leilani Lee-Yates, Bruce Banting, and Gena Ali (Peel)

**1. Reporting on Bill 51**

Gena noted that, given the February 26 commenting deadline on Bill 51, the Regional staff report is slated for the February 9 General Committee Meeting. The City of Brampton report to Committee is slated for February 6 and on to Council on 13. The City of Mississauga report is targeted for February 13. In view of recent staff changes, Caledon hopes to make the commenting deadline. The CVC is not going to take a report to their Board, but, instead will send comments through Conservation Ontario. Regional staff have already consulted with the TRCA and are awaiting comments from the BILT (Building Industry Liaison Team) Committee.

**2. Positive Comments**

**a) Conformity To and Consistency With**

There is benefit in having decisions in accordance with the Provincial plans/policies in effect at the time of the decision, rather than at the time of the original application.

**b) Conditional Zoning**

Although the proposed amendments will enable municipalities to pre-zone, we are unsure how the conditions will work especially with regard to environmental conditions (ie. floodplains). It will be useful to pre-zone for intensification and infill projects, applying conditions for parking, traffic, and urban design. Conditional zoning is close to the development permit system.

However, while conditional zoning is supported, the difference between the new provision and the current practise of using holding zones needs to be ascertained. Holding zones are successful in controlling development until certain conditions are satisfied, or the policy environment is established.

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**c) Minimum Height and Density**

Municipalities have been waiting for this ability, particularly as it relates to intensification.

**d) Pre-application Consultation**

Municipalities would at least have the ability to influence development applications by discussing the municipal objectives with applicants. Municipalities need to pass by-laws to do this.

**e) Design and Character**

Municipalities will finally be able to deal with design and character of developments, and this will be useful in both suburban and maturing urban contexts. It is expected that the development industry will complain about the cost municipal intentions.

**f) Pedestrian Path and Bikeways**

The ability of the approval authority to dedicate pedestrian pathways, bicycle pathways, and public transit rights-of-way ties into Healthy City initiatives, and is a good thing.

**g) Conservation Lands Act**

Amendments to the Conservation Lands Act are applauded, particularly with regard to the ability to secure land for a number of conservation purposes. However, the question of enforcement remains unanswered. While the amendments are commended, we are cautious about the possible uptake of easements over acquisition. Easements work better in rural areas and are easier to obtain through the development process.

**3. Matters Requiring Clarification**

**a) The Regulations**

It is difficult to comment fully on the implication of the proposed amendments, as these would be guided by the Regulations, which have not yet been prepared.

**b) Notice Requirements - Open House**

It is not clear how the open house process will work particularly with regard to the requirements for circulation notices. Will it be the same process that is used for public meetings? Until regulations are available, there is no indication as to the new requirements.

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**c) OMB Appeals**

It is unclear how Board decisions should "have regard to" decisions of municipal councils.

**d) New Information**

It is uncertain how the discretion of the Board will determine the ability for new information on appeals to be introduced. Also, the process for new information to be sent back to municipal councils is unclear.

**e) 5-Year Review and 3-Year Zoning By-Law**

The mandatory comprehensive five-year official plan review and conformity with provincial plans, etc, and the related updating of zoning by-laws within a three-year time-frame are ambitious. The practicality of these time-frames are questioned given instances where official plans are subject to multiple appeals at the Board. Also, in many municipalities, some zoning by-laws are quite old, and producing a comprehensive one on a municipal basis, within a three-year time-frame, may be difficult to achieve, especially in municipalities with limited resources.

**f) Employment Lands**

There are some concerns with the definition of employment lands, particularly with regard to the terms "associated with" and "ancillary to". Also, this definition is different than the one used in the PPS.

**g) Board's Discretion**

It is difficult to determine how the limits on new information on appeals (amendments to official plans, zoning by-laws, and plans of sub-division) would work, especially since the description of "information and material" may be prescribed by future regulation. Clarity is needed on what is meant by "information and material".

**h) Community Improvement Plans**

This is the first time that some Regions will be allowed to participate in Community Improvement Plans. It is unclear what opportunities upper-tiers would have as "prescribed matters" has not been defined. Would it be limited to regional services?

**i) Appeal Rights for Non-Participants**

This could become problematic for residents who may not have been aware of the amendments to an official plan or a zoning by-law, or a plan of sub-division, or sub-division conditions. Residents are less sophisticated than developers.

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**j) Energy Conservation**

In terms of reviewing plans of sub-division, do the proposed amendments require municipalities to consider the supply of energy (eg. natural gas) in terms of location of the source?

**4. Concerns**

**a) Second Suites**

While amendments could allow Second Suites, there is a concern regarding the local/neighbourhood impacts of such eg. too many cars. There is a concern regarding overcrowding, as newer homes are only configured to house one family. Municipalities could always zone areas appropriate for second suites. Caledon already allows second suites, and Mississauga uses conditional zoning for such.

**b) Local Appeal Bodies**

Local appeal bodies could be useful in streamlining development applications. However, the question of accountability comes to the fore, given that it will be made up of non-elected citizens. Perhaps this may encourage more appeals. Also, the difference and fit between the local appeal body and the Committee of Adjustment is unclear.

Local appeal bodies could be established to deal with consents and variances. Although site plans are typically submitted in conjunction with a re-zoning application, appeals on site plans only could appropriately be routed to the local appeal bodies.

**c) Open Houses**

The increased requirements for hosting open houses and notification of such will have budget implications, particularly for municipalities with smaller budgets. This may translate into increased development application fees.

**d) Conservation Easements**

Developers might use sympathetic Conservation bodies to frustrate municipal development intentions. For example, a rogue conservation body might take a conservation easement from a developer to prevent a municipal road project from crossing the land. Municipalities and Conservation Authorities would prefer that there be a requirement for gratuitous dedication of greenbelt lands in development approvals.

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**Areas Requiring Clarification**

**a) Regulations**

Municipalities cannot fully ascertain the implications of many of the proposed amendments as these would be guided by Regulations which have not yet been prepared. Regulations should be drafted and made available for municipal consultation before the Bill receives Royal Assent.

**b) Dedication of Pedestrian Pathways, Bicycle Pathways, and Public Transit Rights-of-Way**

While dedication is supported to achieve many municipal objectives, it is unclear whether municipalities would have to identify these pathways and transit rights-of-way in master or other plans before requiring such dedication.

**c) Notice Requirements**

In supporting a more effective public process, the requirement for giving notice for the preparation of and consultation on official plans is enhanced. It is not clear how the notice requirements for open houses need to be made, and whether they differ from the current notice requirements for public meetings.

**d) OMB Appeals – “Having Regard To”**

It is proposed that the OMB has to “have regard to” decisions made by municipal councils on the same planning matters. Since this wording is weak and unclear, the Ministry should consider publishing guidelines to better define what is meant by “having regard to”. It would be useful if clarity on this matter included the need to “have regard to” official plans when implementing zoning by-laws and when reviewing development applications.

**e) New Information**

Introducing new information at Board hearings would be denied, unless it could not have reasonably been provided to the municipality before the decision of Council. The introduction of new information could be overruled at the discretion of the Board, however, the process for determination by the Board of such has not been articulated. Also, the process for sending the new information back to Council for reconsideration is unclear. Unless this is clarified, this could lead to future litigation.

It is difficult to determine how the restriction on introducing new information on appeals (amendments to official plans, zoning by-laws, and plans of sub-division)

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would work, especially since the description of “information and material” may be prescribed by future regulation. Clarity is needed on what is meant by “information and material”.

**f) Definition of Area of Employment**

Bill 51 proposes a new definition for “area of employment”. It is unclear what is meant by the terms “associated with” and “ancillary to”. Additionally, the proposed definition is different than the one used in the Provincial Policy Statement, 2005. Consistency in provincial definitions is needed to ensure successful implementation of provincial intent.

**g) Community Improvement Plans**

The proposed Bill will allow, for the first time, upper-tier municipalities to participate in Community Improvement Plans. It is unclear what opportunities upper-tiers would be responsible for since “prescribed matters” has not been defined. Upper-tier participation in community improvement plans should be limited to the provision of regional responsibilities and services.

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**Areas of Concern**

**a) Timing Requirements For Official Plan Reviews and Zoning By-Law Updates**

Bill 51 proposes a mandatory official plan review every five years to ensure conformity with provincial plans and policies, with a related zoning by-law update every three years. These time-frames are ambitious and perhaps not practical, since Council-adopted official plans could be subject to multiple appeals at the Board, extending past the five-year time-frame. In view of the latter, the Province should consider allowing municipalities to conduct scoped official plan reviews, as was the case with the Regional Official Plan Strategic Update (ROPSU). Also, in many municipalities, some zoning by-laws are quite old and complex, and the ability to produce a comprehensive one on a municipal basis within the three-year time-frame may be difficult to achieve, especially in municipalities with limited resources.

**b) Second Suites**

The proposed amendments would allow municipalities to designate and zone second suites in a municipality, which would not be appealable to the OMB, except at the time of official plan review. Neighbourhood impacts from parking and over-crowding remain a concern. However, these concerns may be mitigated if municipalities were able to regulate such things as parking compliance, building code, and over-crowding.

**c) Local Appeal Bodies**

In attempting to make the OMB more effective, Bill 51 proposes the establishment of local appeal bodies to streamline development applications. To do this effectively, local appeal bodies could be established to deal with site plans not associated with rezonings, consents, and variances. There is a concern about accountability since the appeal bodies would be made up of non-elected citizens. The latter may result in more appeals. Also, the difference and fit between the local appeal bodies and the Committee of Adjustment are unclear, particularly regarding matters that can be dealt with.

**d) Undertakings Relating To Energy**

Cabinet may by regulation, exempt from the *Planning Act* approval process any undertaking relating to energy, and have been approved or exempted under the *Environmental Assessment Act* (EAA). Municipal planning approvals should not be circumvented, especially at it relates to zoning and site plan control.

**e) Conservation Easements**

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There is a concern that developers might use conservation bodies to frustrate municipal development intentions. As an example, a conservation body might take a conservation easement from a developer to prevent a municipal infrastructure project such as a road construction. Municipalities and conservation authorities would prefer that there be a requirement for gratuitous dedication of lands appropriate for conservation purposes in the development process. However, the Ecogifts programme (ie. the tax receipt programme for conservation easements) has limitations on the tax benefits for land developers from conservation easements.

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**Suggested Areas for Inclusion**

**a) Contents of Official Plans**

The scope of official plans remains conservative in its view on human services. Human services should be distinguished from the social environment. The inclusion of human services is particularly relevant in maturing urban contexts undergoing demographic changes (eg. aging).

**b) Denying Appeals on Official Plan Amendments that Implement Provincial Plans**

In order to fully realise the vision of the Province and attain the objectives of the government, there should be no appeals to the OMB on amendments that implement Provincial Plans such as the final Places To Grow Plan and the Greenbelt Plan within a prescribed period. This was the regime in place for the Oak Ridges Moraine, which worked successfully and the Province retained control of the Provincial Interest.

**c) Applying Conditions**

*Planning Act* amendments could include inclusionary zoning and the ability to impose conditions on draft plans of sub-division to ensure a portion of proposed dwelling units in the proposed plan of subdivision fall within affordable price-points.

**d) Enhanced Provincial Role/Interest**

The amendments aim to secure Provincial Interest, however, further refinement in this area needs to be done, particularly in terms of the timing of provincial declaration during the circulation of the application, guidance on competing provincial interests, the development of a screening mechanism to identify applications or amendments with provincial interests, and support for municipal staff seeking to protect the Provincial interest throughout the entire development review process. The Province is also encouraged to provide detailed guidelines to further define how provincial interest can be crafted into official plan policy.

**e) Financial and Tax Incentive Programmes**

Planning reform must arm municipalities with a suite of enhanced financial and tax programmes geared to sustain development and revitalise nodes and corridors by building higher-order transit infrastructure while simultaneously increasing the supply of affordable housing. Such programmes include tax increment financing and location efficient mortgages.

**f) Transit Enabling Legislation**

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There is a need to complement the Places To Grow Plan with an Urban Transit Enabling Act to ensure the delivery of public transit infrastructure prior to or in

conjunction with anticipated growth in all urban growth centres. This would assist in achieving the many objectives of the Province. Special legislation could be introduced to expedite planning approvals for the planning and construction of public transit infrastructure, including the dedication of land or cash-in-lieu for public transit purposes. Alternatively, the *Planning Act* could mandate all development applications to plan for minimum public transit modal splits by providing for conditions on draft plans of subdivision to ensure developers contributed to the costs of extending transit services to new areas.

**g) Expanding Cash-in-Lieu Provisions**

There should be flexibility in the *Planning Act* to allow municipalities to use cash-in-lieu for provisions other than parkland. Amendments could allow municipalities to use cash-in-lieu for public transit and transportation demand management programmes. Also, every plan of sub-division could be required to allocate a percentage of affordable housing units, with an option for a cash-in-lieu payment that could be put into an affordable housing fund for the development of affordable housing units at alternate sites. This would require the ability to impose conditions on new plans of sub-division.

**h) OMB Reform**

Changes introduced by Bill 51 (to cause the OMB to have regard for municipal decisions taken on the matters before the Board, and to limit the introduction of information which was not made available to the municipal council) positively demonstrate enhanced respect for the decision-making role of the municipal council.

These reforms however fall far short of meeting the need identified by the GTA Task Force on OMB Reform as previously endorsed by Council. That need is to convert the role of the OMB from one of substitute decision-maker, to one of an appellate body intervening to overturn a decision of a municipal council only where that decision is demonstrably flawed.

One well respected commentator has recently suggested that the Board has always traditionally had "regard to" municipal council decisions. That is perhaps debatable, but if true only serves to emphasize how little real change is engaged by Bill 51 in this area.

The same commentator has suggested that limiting information before the OMB to information that was before council will simply delay the process as interested

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parties demand time to place before the council all of the information they feel that they will ultimately need to have before the OMB. This concern is clearly premised on the view that the OMB remains the “real” decision-maker, with municipal council being a hurdle on the way to getting there. And that regrettably remains a realistic view despite Bill 51.

What is required is real change in the role of the OMB. Bill 51 delivers tokens of respect which in the absence of real change may actually harm the process by treating municipal councils “as if” they were the real decision-makers when that role in fact continues to be reserved to the Board.

**i) Strengthening Upper-Tier Roles in Consultation**

Applicants will have the ability to consult with the municipality on both plans of sub-division and site plans. It will be consistent with the role of the Province for upper-tier municipalities as identified in Places To Grow if the *Planning Act* would require similar opportunities for consultation with upper-tiers on these applications.

**j) Development Permit System**

Amendments were silent on the development permit system (DPS). The DPS could be extended to all municipalities, and be used to target development in nodes and corridors, to enable more flexible implementation, to better facilitate infill and redevelopment projects, to avoid delays, and to streamline development approvals combining the current site plan and minor variance processes. However, the current system being piloted in municipalities across Ontario requires considerable change to simplify and streamline the procedures.