Questions from Municipal Outreach Session (April 20, 2022)

Community Infrastructure and Housing Accelerator

1. **Are there timelines that apply to the Minister's response to requests for the community infrastructure and housing accelerator tool?**

   There are no legislative timelines for the Minister to respond to municipal requests for the community infrastructure and housing accelerator tool.

2. **Is there any opportunity for municipal cost recovery for accelerator tool work undertaken by municipal staff on behalf of a landowner?**

   The legislative changes do not provide for a specific fee to be charged to process a community infrastructure and housing accelerator request. Municipalities could consider whether they could use any of their existing authority to levy fees and charges in respect of work undertaken in respect of accelerator tool requests.

3. **If the Minister makes a Community Infrastructure and Housing Accelerator order, can it be assumed that the Minister has consulted with other provincial or local authorities that may have legislation pertinent to the rezoning?**

   The tool is intended to be used for priority projects and its use will be evaluated on a case-by-case basis. MMAH would engage partner ministries, the municipality that submitted the request, stakeholders, Indigenous communities and other parties as appropriate, when a CIHA order request has been received.

Fee Refunds

4. **Does the clock for fee refunds start from the date the application is received or when it is deemed to be complete?**

   The new complete application requirements for site plan are generally the same as the requirements that currently apply to other types of matters under the Planning Act.

   The changes give a municipality the authority to refuse to accept/consider a site plan application until they have received all the necessary information and material and any fee. Until these are received, the municipality would be able to refuse to accept the application and the timelines for review would not begin.

5. **What if SPC approvals timelines are not met due to other parties' failure to provide comments/information (applicants, agencies, provincial ministries, federal government, etc.) i.e., circumstances beyond municipal control?**

The new complete application requirements for site plan are generally the same as the requirements that currently apply to other types of matters under the Planning Act.

As a result, the changes allow municipalities, through their official plans, to establish additional information and material required to review the site plans beyond what is currently in the legislation.

The changes give a municipality the authority to refuse to accept/consider a site plan application until they have received all the necessary information and material and any fee. Until these are received, the municipality would be able to refuse to accept the application and the timelines for review would not begin.

A determination on whether the application is complete or not, including any disputes regarding reasonableness, would be addressed in a similar manner as with other types of planning applications under the Planning Act.

In addition, as the fee refunds are proposed to take effect January 1, 2023, this would provide time for municipalities to develop official plan policies which would assist in ensuring site plan applications include any additional information and material to qualify as a complete application so that the timelines could begin.

Also starting January 1, 2023, the provincial government has also committed to providing comments on housing applications within 45 days.

6. **If a ministry/agency exceeds 45 days to provide comments on an application can a municipality proceed with consideration of the proposal in absence of the comments in order to meet approval timelines?**

   The municipality should make a decision with the information that is available to them. If there is not sufficient information before the municipality to consider the application, the application may need to be refused.

7. **Will there be regulations that stipulate how refunds are made (e.g., will the applicant have to request a refund)?**

   No, the legislation does not provide for regulatory authority to specify how the refunds are to be given.

   The changes provide that applicants are entitled to a refund when the legislated timelines are exceeded.

   This means that municipalities need to ensure that they have administrative measures in place to be able to provide refunds immediately if they fail to meet timelines.

   However, these changes will not take effect until January 1, 2023, to allow time for municipalities to make improvements to their application review and approval

processes, including augmenting complete application requirements, in order to increase their ability to meet timelines and avoid owing refunds.

8. **What implications are there for external agencies (e.g., conservation authorities, upper tier governments) who also have fees for certain applications and are actively involved in review of site plan applications, zoning amendments, etc.? Will the Municipality have to refund all the fees including external agency fees?**

   The municipality is responsible to refund any fee paid pursuant to section 69 of the Planning Act.

9. **The penalty on decisions related to site plans - is that to get to a yes/no decision or to complete the process (agreement/conditions done)?**

   The decision for site plan is related to the approval of plans and/or drawings. If the approval is going to be conditional, then the conditions need to be specified. However, any agreements required as a condition of approval can be developed later.

10. **If a rezoning is submitted with an Upper Tier OPA, the local municipality can't pass the by-law until the upper-tier Council has adopted the OPA. Is there any remedy for the local municipality to recoup their fees if the Upper Tier takes over 120 days?**

    If a municipality does not make a decision within the legislated timelines, they would be required to gradually refund the application fee to the applicant. Municipalities can consider using complete application requirements to ensure that timelines for processing applications do not begin until any impediments to making a timely decision are addressed.

11. **What happens if a municipality disputes the refund of fees? Is there recourse?**

    Any recourse regarding disputes over refund of fees would be through the courts.

12. **Does the requirement for graduated refund of fees apply to CPPS or development permit by-laws?**

    The legislative changes relate to zoning by-law applications and site plans. Where a community planning permit system exists, to the extent an applicant is seeking to amend a community planning permit by-law, section 4 of O. Reg. 173/16 provides that the by-law is deemed generally to be a zoning by-law. By contrast, an application for a community planning permit arises under section 10 of O. Reg. 173/16 and there are no provisions related to graduated refunds of fees for these applications.

13. Will the Province be providing funding for additional resources to expedite applications?

The province has invested up to $350 million through the Streamline Development Approval Fund, Municipal Modernization Program, and Audit and Accountability Fund to help municipalities implement efficiencies and identify cost savings. These programs can help municipalities cut red tape, streamline and modernize municipal planning processes including official plan and zoning updates, and plan of subdivision and site plan approvals, as well as improve their delivery of other local services.

Furthermore, the province is collaborating with key stakeholders to develop a data standard for development approvals. A data standard would provide consistent rules and guidelines that could be used by all players in the development process and would support further modernization in Ontario's housing and development sectors.

Mandatory Delegation ("assignment") of Site Plan

14. Will the delegation to staff of SPC decisions require a Delegation By-law passed by Council?

No. The new authority in effect "assigns" the power to municipal staff but relies on municipalities to identify the appropriate person(s). The new subsection 41 (4.0.1) of the Planning Act is the provision that would govern the identification of the individuals who would be empowered to give site plan approval. This new authority requires council to pass a by-law to identify the person(s) (i.e., an officer, employee or agent of the municipality) who will carry out the site plan approvals. This change will not take effect until July 1 to allow time for municipalities to take any necessary actions to implement this change.

15. What happens if a municipal council does not delegate the authority to approve site plans (i.e., does not pass a by-law)?

If a council wishes to continue to use site plan control, it will be required to appoint an officer, employee or agent of the municipality as an authorized person to carry out the site plan control approvals. For applications submitted on and after July 1, 2022, councils will have no authority to give site plan approvals.

16. With the mandatory delegation of Site Plan approval to staff, are "bump ups" for approval to Council still permissible? What if a proponent objects to having their site plan application considered by the delegate? Could the matter be deferred to Council?

The new authority in effect "assigns" the power to approve site plans and/or drawings to municipal staff. For applications submitted on and after July 1, 2022, councils will have no authority to give site plan approvals.

This change would not address the local administration of site plan control, provided the decision was made by the official identified by municipal council.

17. What is the 'approval' being delegated to staff? Approval of drawings? Entering into an agreement? Conditional Approval?

The decision for site plan is related to the approval of plans and/or drawings, including any conditions. The approval may also include requirements for agreements. The changes do not impact the identification of the signatory(ies) of those agreements on behalf of municipalities.

18. Does mandatory delegation of site plan approval eliminate Planning Advisory Committees?

No. Bill 109 did not make any changes to the provisions dealing with planning advisory committees.

19. Do staff have the authority to enter into a site plan agreement (including the authority to bind)?

The changes do not impact the identification of the signatory(ies) of site plan agreements on behalf of municipalities.

20. Are Community Planning Permits required to be delegated to staff?

Bill 109 did not make any changes related to delegation in the context of the community planning permit system.

Reinstatement of Lapsed Draft Plans of Subdivision

21. How would approval authorities know for certain that no agreements of purchase had been completed for a given plan of subdivision?

In considering whether a draft approval should be reinstated, the proposed legislative change would require the owner of the proposed plan of subdivision to provide to the approval authority an affidavit or sworn declaration certifying that no purchase and sale agreement had been entered into for of any land within the plan of subdivision.

22. Applications might have been initially files a long time ago and may not reflect all significant policy changes made since then, what applies?

Although this proposed new authority would be a discretionary power, when considering the re-instatement of a draft plan approval, the approval authority would still be required to ensure that their decision is consistent with and conforms to provincial policies and plans. If the proposal no longer reflects the current policy environment, the draft plan could not be re-instated or may need modifications to the original approval.

Building Code

23. Did MMAH consult with any fire organizations over the 12-storey mass timber buildings? Or the potential single means of egress for 4-6 storey buildings? Has this Building Code change passed? Did the Ministry consult with Emergency Service Providers?

One priority identified by the Housing Affordability Task Force was to reduce barriers to small multi-unit residential buildings that could increase housing supply. The Task Force specifically identified potential Building Code changes that would allow a single means of egress where appropriate to improve the economic viability and supply of these small multi-unit residential buildings.

On April 1, 2022, the Minister of Municipal Affairs and Housing wrote the Chair of the Canadian Commission on Building and Fire Codes requesting the prioritization of investigating National Construction Code changes to support the Task Force recommendation, while continuing to protect health and safety. Once the research has been completed, should the government proceed with the single egress concept, a specific code proposal would be consulted on to ensure that the public and key building industry and fire safety stakeholders have an opportunity to provide feedback.

As part of investigating this issue, it is recognized that that the requirement for two means of egress is an important part of the interdependent system of fire and life safety requirements, and that changes to a major element like egress requires substantial stakeholder consultation and research, assessment of a large number of related building code provisions including potential enhancements of compensating fire and life safety measures, and review of intersecting regulations and legislation including the Planning Act and Fire Protection and Prevention Act.

Other

24. How will membership in the Ontario Housing Supply Working Group be determined?

A diversity of stakeholders with expertise in housing will be considered. This will include experts from both the public and private sector to ensure that all perspectives and experiences are reflected.

25. **Are there any proposed corresponding changes related to Registry Office processes as significant delays are experienced getting site plan agreements registered on title where mortgage postponements are required? Will there be any change in the process to ensure that site plan agreements are not removed from title when mortgages are discharged to avoid this timely process?**

The Land Registry Office does not enforce the requirement for mortgage postponements. If delays are being experienced relating to mortgage postponements, the matter should be raised with mortgage lenders. The Land Registry Office is not aware of circumstances where site plan agreements have been removed from title when a mortgage has been discharged.

Further, site plan agreements would be registered after an approval on a site plan application has been given. Beyond providing authority for the registration and enforcement of an agreement required as a condition of site plan approval, the Planning Act does not address Registry Office processes which are not part of the site plan process.

26. Is the Province extending the July 1st, 2022, Growth Plan conformity date for municipalities in the Greater Golden Horseshoe for Municipal Comprehensive Reviews/Official Plans?

Upper and single-tier municipalities in the Greater Golden Horseshoe are required to meet the July 1, 2022, date of conformity established by the Minister of Municipal Affairs of Housing under the Places to Grow Act.

27. Can additional time (e.g., 60+ days) be provided to submit comments on the accelerator tool policies and topic specific housing consultations to allow for meaningful and well considered feedback from municipalities on those matters?

The ERO postings for these consultations close on April 29, but beyond that date municipalities are still welcome to send further feedback to planningconsultation@ontario.ca