
Subject: Planning Service Agreement and 2024 Memorandum of Understanding
(Engineering Function and Services in Niagara)

Report to: Planning and Economic Development Committee

Report date: Wednesday, October 9, 2024

Recommendations

1. That the Region's Chief Administrative Officer **BE AUTHORIZED** to sign the Planning Service Agreement with interested area municipalities, upon provincial proclamation for the amendments to the Planning Act related to upper-tier municipal planning responsibilities; and
2. That the Region's Chief Administrative Officer **BE AUTHORIZED** to sign the 2024 Memorandum of Understanding (Engineering Function and Services in Niagara) upon provincial proclamation for the amendments to the Planning Act related to upper-tier municipal planning responsibilities.

Key Facts

- The purpose of this report is to provide information to Council on discussions amongst local area municipalities in preparation for proclamation and to seek approval to enter into a planning service agreement and an engineering Memorandum of Understanding (MOU).
- Bill 23, *More Homes Built Faster Act* received Royal Assent on November 28, 2022.
- Bill 23 made significant changes to the *Planning Act*, in particular removing upper-tier planning responsibilities upon proclamation. The proclamation date for Niagara Region has not been set.
- Bill 23 added section 15 (2) to the *Planning Act*. This section contemplates the potential for an agreement between a lower tier municipality and an upper tier municipality, whereby the upper tier may provide advice and assistance on planning matters to the lower tier municipality.
- As a result of this change, the Region facilitated discussions with local municipal CAOs and Planning Directors to determine a new model of planning service delivery that supports the changes to provincial legislation, expected growth needs across the Region, and an improved customer-centered service approach.

- The Planning Service Agreement was prepared through consultation and collaboration. It sets out the terms of service delivery between the Region and those interested municipalities following proclamation of the removal of removal of upper-tier planning responsibilities. The Planning Service Agreement would not be effective until 90 days following the proclamation date by the Province.
- Currently, the Region is still responsible for commenting on planning matters of provincial interest and the approval process. The 2019 MOU (Planning Function and Services in Niagara) outlines the roles and responsibilities between the Region and the Area Municipalities specifically to planning and engineering review and will remain in effect until proclamation.
- Post-proclamation, a new MOU is required. The 2024 MOU (Engineering Function and Services in Niagara) was prepared through consultation and collaboration with the Public Works Officials and Planning Directors. It would come into effect upon proclamation. It removes the planning review and updates the engineering review functions related to development applications.

Financial Considerations

The Planning Service Agreement specifies that costs of services related to the development review function will be covered by the regional application review fees. Additionally, the agreement allows for the Area Municipalities to request assistance from the Region on special projects based on staffing capacity and a fee for service model. Fees will be established under the Region's Fees and Charges By-law.

Analysis

In October 2022, the Province released the omnibus Bill 23 *More Homes Built Faster Act*. Bill 23 proposed several changes the *Planning Act*, along with changes to other legislation. One major change proposed to the *Planning Act* is the addition of a section to the *Planning Act* that would remove planning authority from certain upper-tier municipalities, including Niagara Region upon proclamation. The Minister has indicated that the change to upper-tier municipalities without planning responsibilities will be proclaimed by the end of the 2024, although a specific date for Niagara Region has not yet been set.

What we do

Currently, the Region comments on development applications from a provincial and regional perspective (i.e., land use compatibility, archaeology assessment, employment

land conversion, records of site condition, regional infrastructure including roads and water and wastewater, waste management, storm water management, sewage system review etc.).

Additionally, from a policy perspective we update and maintain the Niagara Official Plan (NOP). As part of the transition, area municipalities will be responsible for maintaining the NOP until they have completed updates to their local official plans that incorporate applicable NOP policies into their plans.

Following proclamation, the Region will not be responsible for commenting on matters of provincial interest but will continue to comment on matters of Regional interest (i.e. regional infrastructure, other engineering services and Region owned properties). Therefore, the Region continues to have a commenting role in the Planning approvals process. Additionally, the need for enhanced regional growth management and staging of development is necessary to ensure effective and financially sustainable input occurs to post proclamation discussions with the Area Municipalities on how and where they will grow.

Planning Service Agreement

To assist with the transition, the Province also added a new section to the Planning Act as part of the Bill 23 amendments specific to upper-tier municipalities:

15 (2) The council of an upper-tier municipality, on such conditions as may be agreed upon with the council of a lower-tier municipality, may provide advice and assistance to the lower-tier municipality in respect to planning matters generally.

Section 15 (2) allows the area municipalities the ability of having the Region provide advice and assistance to area municipalities.

In late 2022 and early 2023 the Region met with the 12 area CAO's and Planning Directors to discuss the implications of downloading regional planning authority and functions to lower-tier municipalities. As part of these meetings the Region retained a facilitator to assist with the discussion and to develop a new model for the delivery of planning services that supports the provincial changes, meets the Regions expected growth needs and is based on a customer-centred service approach.

Through discussions with area CAO's and Planning Directors it was determined that some area municipalities felt there was interest in maintaining consistent delivery of the planning function across Niagara. In addition, it was determined that the preferred approach would be to share the resources of the Regional planners with those interested municipalities on a fee-for-service basis recognizing that each municipality may have differing needs.

Currently, Niagara Region operates on a fee-for-service approach to cover staff time to undertake the development review function. The cost of development planning review work is passed onto the applicant. This same approach would be used in the planning service agreement. The regional planning development review fee costs can be found within Appendix B of service agreement. Regional staff will undertake the review role on behalf of the area municipality and formal comments will appear as the area municipalities comments.

Appendix C of the agreement allows an area municipality to purchase additional planning resources on a project basis. This is dependant on available staff capacity and on a first come basis.

The planning service agreement was prepared with the support of external legal counsel also specifies:

- monthly invoicing for services provided;
- annual fee adjustment per the Consumer Price Index (CPI) or adjustments outlined in the Region's Fees and Charges By-law;
- the parties conduct a review of the agreement at the end of the term to determine if the timelines, service requirements and levels of service have been met; and,
- conflict and dispute resolutions.

The agreement will come into effect 90 days after proclamation is announced for Niagara Region becoming an upper tier without planning authority and expire 90 days following the next municipal election. Additionally, the agreement provides time for an effective transition of responsibilities following proclamation and for those municipalities looking to extend, amend, or terminate the agreement as needed.

To date there are six area municipalities that have formally requested assistance from the Region to provide advice on planning matters (Lincoln, Pelham, Grimsby, Niagara on the Lake, St. Catharines and Wainfleet). Four additional municipalities have indicated they are interested in exploring this option.

2024 Memorandum of Understanding (Engineering Function and Services in Niagara)

The 2019 MOU has been updated to remove the land use planning review function and will only pertain to engineering review. The purpose of the 2024 MOU is to update and clarify the respective engineering roles and responsibilities of the Region and Area Municipalities, as well as to be an instrument of continuously improving service and relationship management. This revised 2024 MOU sets the foundation for the future and confirms the framework within which the Parties will function and provide engineering

services.

The 2024 MOU has been collaboratively developed by the MOU Working Group. It has been reviewed, refined, and endorsed by the Public Works Officials and Niagara Area Planners. The 2024 MOU outlines the relationship with our Area Municipalities and outlines the Region's participation in planning approvals on matters related to regional infrastructure, other services, Region owned land, collaboration on growth related matters, etc. This will replace the current 2019 MOU between the Region and all area municipalities upon proclamation.

The 2024 MOU update also includes the following additional changes:

- allows Area Municipalities to request the Region's assistance on storm water management review: and,
- also provides a provision that local Official Plan policies will have to be updated to include Niagara Official Plan policies related to infrastructure.

Alternatives Reviewed

Regional Council can decide not to enter into the planning service agreement. This option is not recommended as many of our area municipalities do not have the in-staff capacity or experts to take on all the planning review functions currently.

Regional Council can decide not to enter into the 2024 MOU. This option is not recommended as it clearly sets out the role and expectations of the Region with respect to planning approvals for the area municipalities.

These two items further assist the Region and the area municipalities to prepare for proclamation.

Relationship to Council Strategic Priorities

The planning service agreement and the 2024 MOU support Council's strategic priority of an Effective Region.

- Implement continuous improvement and modernized processes to ensure value-for-money in Regional services and programs.
- Explore and implement opportunities to improve service delivery outcomes through shared services.

In addition, they specifically address Council's strategic priority of an Equitable Region.

3.2 Support growth and development following Bill 23, More Homes Built Faster Act, 2022

Other Pertinent Reports

- PDS 4-2019 Memorandum of Understanding for Planning Function and Services between Niagara Region and Local Area Municipalities
- PDS 2-2018 Protocol for Planning Services Between the Regional Municipality of Niagara and the Niagara Peninsula Conservation Authority – January 10, 2018
- PDS-49-2017 MOU Planning Services in Niagara – November 8, 2017
- PDS-43-2017 Review and Update of the 2007 Memorandum of Understanding (MOU) between the Local Area Municipalities, Niagara Peninsula Conservation Authority and Niagara Region, and the 2008 Protocol for Plan Review and Technical Clearance between the Niagara Peninsula Conservation Authority (NPCA) and Niagara Region – September 15, 2017
- PDS-C 4-2014 Local Area Municipal Response to the 2014 Update to the Memorandum of Understanding for improving the Planning Function in Niagara – May 14, 2014
- PW 1-2014 Building Relationships, 2014 Update to the Memorandum of Understanding for Improving the Planning Function in Niagara – January 7, 2014
- PW 10-2007 Memorandum of Understanding – Planning System in Niagara

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Appendices

Appendix 1	Planning Service Agreement
Appendix 2	2024 Memorandum of Understanding (Engineering Function and Services in Niagara)