

Municipal, Planning and Property Tax

June 5, 2014

City of Toronto Considers Alternative Land Planning System

The City of Toronto is considering implementing a new land planning system that could significantly impact the construction and land development industries. The Development Planning System (DPS) combines zoning, site plan and minor variance application processes into one single process for an entire jurisdiction or specified neighbourhood. The DPS uses area-based plans that will be drafted with community consultation and likely involve updated zoning. These plans are intended by the City to produce more predictable development outcomes. As a result, landowners' ability to develop beyond an area's building specifications could be reduced. The DPS would also provide greater discretion to planning staff and reduce avenues for appeal.

Given the potential impact of the DPS for the construction and land development industries, including updated zoning, we recommend that clients consider the City's move towards DPS and ensure that their interests are represented in the process.

Current Status of the Proposed DPS

The City is taking its first steps towards enabling DPS as a potential land planning system for select neighbourhoods. To create this possibility, the City must satisfy the *Planning Act's* requirements by amending its Official Plan to describe the DPS regulatory process in accordance with Ontario Regulation 608/06. A public consultation on the matter is scheduled for June 9, 2014. The Chief Planner and Executive Director, City Planning is then expected to submit her final report on the amendment to a public meeting of the Planning and Growth Committee on June 19, 2014.

Key Elements of the Proposed DPS

The Chief Planner's proposed amendment to the Official Plan would transform the entire City of Toronto into a development permit area. This would mean that a neighbourhood could be transferred to the DPS if a development permit by-law ("DPS by-law"), specific to the area, is passed. After the by-law is in force, landowners would be required to apply for a development permit for each build. The passing of a DPS by-law may be appealed to the Ontario Municipal Board within the initial *Planning Act* appeal period.

Like zoning by-laws, a DPS by-law would detail an area's permitted land uses and development standards (such as height or density). However, unlike the current model, these standards will be fixed with minimum and maximum limits. Once the DPS by-law is in force, permits will be denied for any proposed building that does not fit within the stated limits. Only an applicant for a DPS permit may appeal Council's approval or refusal of a DPS permit application. Third parties will not be allowed to appeal the issuance or refusal of a permit on a site by site basis.

New Criteria Suggested by the Proposed Official Plan Policies

Under the proposed Official Plan policies, applications for permits would be evaluated against the development standards specified in the DPS by-law, such as height, density and set-backs. The proposed policies also indicate that broad evaluative criteria may be included in DPS by-laws. In the proposed approach, applications may be evaluated against:

- the built environment including street patterns, area land uses, the public realm, built form and heritage uses;
- the human environment including housing, open spaces, community and recreation services;
- the natural environment including its protection, restoration and enhancement;
- transportation and municipal infrastructure;

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- Toronto's economic capital, competitiveness and cultural capital; and
- development phasing to support above criteria.

Permit Conditions and Community Benefits

Under the proposed Official Plan policies, DPS by-laws could outline conditions for permit approval, some of which are beyond conditions that can currently be imposed under the existing zoning, site plan and minor variance systems. A DPS permit by-law may require:

- sustainable design features;
- specified use of building materials, architectural details and colours;
- site alterations;
- conveying land to the city;
- protecting trees and vegetation;
- land use impact measures related to air quality, water, noise, shadows, etc;
- public easements;
- securing or replacing rental properties;
- streetscape improvements; and
- the monitoring of the use of lands provided the monitoring was necessary to protect public health and safety and/or protect the natural environment.

The proposed Official Plan policies would also allow the DPS by-law to set out requirements for a variety of community benefits or cash contributions in lieu.

Unlike the City's current zoning model, which typically relies on unpredictable public benefit negotiations under Section 37 of the *Planning Act*, benefit contributions in a DPS area would be proportionate to the height and density of the applicant's proposed building. Additional contributions could not be made, however, to obtain permission to exceed the DPS by-law's height and density limits.

To encourage compliance with the above conditions, the permit by-law may require applicants to enter into an agreement with the City and to provide financial security. Certain land uses may be exempted from fulfilling these requirements.

Rights of Appeal and Decision-Making Authority

Appeal opportunities will change under the proposed DPS. To challenge a DPS area's building specifications, a proponent has two options. A proponent can:

- appeal the entire by-law to the OMB within the initial appeal period following City Council's adoption of the DPS by-law; or
- propose an amendment to the DPS by-law once it is in force and appeal City Council's decision, or lack thereof, on the amendment to the OMB.

According to the proposed Official Plan policies, an application to amend a DPS by-law must be considered in the context of all of the lands within the area subject to the by-law. To propose an amendment to the DPS by-law to Council, the applicant must provide a comprehensive planning rationale within the context of the entire area. The proposed Official Plan policies require an applicant to (i) consult the public and the City, (ii) provide proof of changes in the DPS area since the DPS by-law's enactment, and (iii) provide areas studies and other survey and planning documents.

Once a DPS by-law is approved for an area, an applicant will not be allowed to appeal its site specific permit application to the OMB outside of the potentially limited DPS by-law framework. The OMB will only hear appeals within the DPS by-law framework from applicants who (i) have not received a response within 45 days, (ii) are seeking to reverse permit refusals, or (iii) wish to remove conditions. In each of these specific circumstances, the Board's decision-making power is limited by the DPS by-law framework.

Only an applicant for a DPS permit may appeal Council's approval or refusal of a DPS permit application. Third parties will not be allowed to appeal the issuance or refusal of a permit on a site by site basis.

The Official Plan policies provide a broad scope for delegation of decision-making powers at the DPS by-law stage. Toronto City Council will be allowed to delegate its decision-making authority regarding permit applications to staff, a committee of Council, or a separate body. The authority to execute, amend and release development permit agreements may also be delegated. It has been suggested that smaller or less complex applications would be subject to staff approval, while more complex or significant applications would require Council approval.

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Potential Benefits of the Proposed System in accordance with the Proposed Official Plan Policies

The City of Toronto and proponents of the proposed Official Plan policies believe that the DPS will have these benefits:

- Developers and landowners will receive clearer guidance regarding which types of buildings they may construct.
- DPS by-laws will outline predicted community benefit charges. This is intended to reduce the need to negotiate with City officials on Section 37 public benefits.
- The permit application provides a one-stop source for planning approvals, reducing the number and complexity of applications.
- Application processing times may be significantly reduced.
- Public input and appeals occur at the beginning of the process, leading to a reduction in mid-process delays.
- Third party appeals to the OMB are not permitted after permits are issued. Public notices for applications are currently not required.

Potential Issues with the Proposed System in accordance with the Proposed Official Plan Policies

Critics of the DPS have described several areas of concern. These include:

- Once a DPS by-law is approved for an area, it will not be possible for an applicant to appeal its site specific permit application to the OMB outside of the potentially limited DPS by-law framework. To challenge a DPS area's building specifications, a proponent has two options. A proponent can:
 - appeal the entire by-law to the OMB within the initial appeal period following City Council's adoption of the DPS by-law; or
 - propose an amendment to the DPS by-law once it is in force and appeal City Council's decision, or lack thereof, on the amendment to the OMB.

- Proposed buildings will be subject to new conditions and criteria which could lead to significant project alterations and costs.
- City staff may gain significant discretion over the permit approval process if Council delegates its decision-making powers over all or some permits.
- The process and criteria to select new DPS areas are unclear.
- It will not be possible to apply for minor variances through the Committee of Adjustment.
- The policies do not yet explain how existing applications would be processed once a DPS area is selected.

Opportunities for Input

A public consultation on the proposed DPS is scheduled for June 9, 2014. The Chief Planner and Executive Director, City Planning is then expected to submit her final report, containing the Official Plan amendment allowing DPS by-laws, to a meeting of the Planning and Growth Committee on June 19, 2014 and to City Council potentially in July. Once the Official Plan amendment is passed, Council will be empowered to select and transition areas of the city to DPS.

If individuals are interested in appealing the amendment to the OMB, it is in their interest to become involved in the upcoming public meetings. The only individuals who will be allowed to appeal the Council's decision to amend the Official Plan will be those who make an oral submission at the public meeting or a written submission to Council before the amendment decision is made.

It is possible that some individuals will decide not to challenge the enabling Official Plan policies, but instead want to review any specific DPS by-laws that are brought forward. Future DPS by-laws can be appealed, although aspects of the by-laws that are specifically controlled by the enabling Official Plan policies may be difficult to challenge.

For more information on the proposed DPS and its implications, please contact a member of our Municipal, Planning and Property Tax Group.