Alberta Professional Planners Institute *Municipal Government Act (MGA)* Review Report

Response to Draft *MGA* Related Group 2 Regulations and City Charter

Sept 17, 2017

APPI
Alberta Professional Planners Institute

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PURPOSE OF REPORT – PROFESSIONAL RESPONSIBILITY

The Alberta Professional Planners Institute (APPI) is a professional, regulated organization of private and public-sector planners practicing in Alberta, the Northwest Territories and Nunavut. As the voice and official representative of Registered Professional Planners in Alberta, APPI re-engaged its MGA Review Task Force to prepare a thoughtful response to these draft MGA related regulations.

The *Municipal Government Act (MGA)* contains provisions that govern much of the work that planners in Alberta undertake daily – in fact, Part 17 of the MGA (Planning and Development) specifically addresses how planners carry out their work. The foundation of the planning legislation in Part 17 of the MGA is "…to provide plans and related matters….for the overall greater public interest" (s.617).

The draft MGA-related regulations provide provincial guidance to how MGA amendments will be implemented. Because APPI is governed as a publicly accountable organization with an obligation to serve the public interest under the *Professional and Occupational Associations Registration Act*, it is important that APPI's advice and recommendations be considered with respect to any changes that are made to the MGA.

INTRODUCTION

On March 21, 2017 APPI Council forwarded its comments to Municipal Affairs on Group 1 Regulations. On July 24, 2017 Municipal Affairs released Group 2 of the draft regulations that will guide the implementation of changes made to the MGA through Bill 20 (the *Municipal Government Act 2015*) and Bill 21 (the *Modernized Municipal Government Act*). Feedback is being requested until September 22, 2017. The APPI MGA Task Force specifically reviewed regulations relevant to land use planning as follows:

- Intermunicipal Collaboration Framework Regulation
- Off-Site Levies Regulation
- Subdivision and Development Appeal Board Regulation
- Subdivision and Development Regulation and Subdivision and Development Forms Regulation Update
- The City Charter Regulation

The Task Force did not review regulations that dealt with a specific municipality (e.g., Canmore undermining matters and the Aggregate Payment Levy Regulation).

DRAFT SUBDIVISION AND DEVELOPMENT REGULATION

What's Changing?

A summary of the draft changes is identified as follows:

Section 5

- The purview of Alberta Transportation is expanded to review subdivision applications of any highway regardless of the speed limit.
- The term 'body of water' has become the overall descriptor of all fluvial features mentioned in the Regulation.
- Referrals for historic resources are clarified.

Section 6

- Timelines for subdivision applications under 653.1 of the MGA are clarified.

Section 10, 11

- Wording around the Alberta Energy Regulator's process is aligned, including permanent dwellings being restricted within 100 m of a gas or oil well.

Section 12, 13

- Terminology on considering setbacks between wastewater treatment plants and certain uses has been modified slightly to consider both distance from property line and distance from a suitable building site.

Section 14

- Alberta Transportation's existing review authority is clarified.

Section 19

- Conservation Reserve (CR) is formally recognized as a designation.

Section 22

- An MGB appeal must consider distances with respect to historical sites and resources.

Section 26

- The intent is for the regulation to come into force on October 1, 2017.

Form 1, 2: Application for Subdivision and Deferred Reserve Caveat

- The form has been revised to align with subdivision and development regulations.

Summary

The Task Force believes Draft Regulation as proposed does not significantly alter the purpose and intent of the original subdivision development regulation. The majority of changes include clarifications to processes and terms that arise directly from provisions of the Modernized MGA. The proposed Subdivision and Development Regulation improves clarity and aligns with MGA requirements.

The Task Force has identified one concern with Section 6 of the Regulation respecting the requirement for subdivision application decisions to be made within 21 days from the date of deemed complete application. While this is a prompt timeline, the reality is that certain provincial government departments and other referral agencies identified in section 5 of the

Regulation often submit their referral comments well beyond the 21-day timeline, thereby requiring the municipality and applicant to sign a time extension. It is therefore recommended that the Province consider an addition to Section 6 that would improve accountability on the part of required referral agencies identified in Section 5 of the Regulation to respond in a defined time period, or if that time period is not able to be met, identify a specific date when referral comments will be delivered.

Recommendation
Identify a requirement in section 6 of the Regulation that requires Agencies identified in section 5 of the Regulation to respond within the specified time for submitting referral comments for municipal subdivision applications. If that time period is not able to be met, require the referral agency to identify a date when the referral comments will be delivered.

Rationale

If municipalities are to be more effective and timely in making decisions on subdivision applications within a 21-day referral, it is incumbent upon other referral agencies to be accountable to meet that timeline. Referral agencies identified in Section 5 of the Regulation often have a backlog of referral comments and so providing the municipality with a delivery date allows for more coordination among the agencies, municipalities and applicants. It also creates accountability on the part of those agencies to either provide more resources to meet the deadlines or establish a defined timeline that encourages greater attention in moving the application forward.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD REGULATION

Summary

This new Regulation establishes SDAB training criteria and standards with the objective of improving the knowledge base of these quasi-judicial bodies and providing a mechanism for maintaining those standards.

The Task Force makes no recommendation.

INTERMUNICIPAL COLLABORATION FRAMEWORK REGULATION

What's changing

The revised MGA has added a requirement for municipalities with a common border to create Intermunicipal Collaboration Frameworks (ICF) with each other, within two years of the MGA coming into force. ICFs will address the sharing of services on an intermunicipal basis and ensure municipalities work together to build the best communities and deliver the best services possible to their residents. This new Regulation establishes requirements for adopting, implementing and amending an ICF, and clarifies the process by which two or more municipalities resolve related disputes. Key elements include:

- the basic ICF negotiation requirements;

- a dispute resolution process for ICF negotiations;
- a dispute resolution process for ICF agreements;
- the appointment of an arbitrator;
- an arbitrator's powers;
- public participation in the arbitration process; and
- judicial review of arbitrator powers.

It is important to note the following:

- The ICF takes precedence over other bylaws (except for the land use bylaw and the IDP bylaw which can form an appendix to the ICF) if a conflict or inconsistency is found (section 5(2)). Mediation is the recommended first step should one municipality serve notice.
- Should mediation not be successful, the next step is to move to arbitration. The arbitrator has certain powers under the proposed regulations:
    - Soliciting public input is at the arbitrator's discretion and hearings may or may not be made public – also at the arbitrator's discretion (18(1), 19);
    - The arbitrator has the power to create an ICF and instruct each municipality to adopt it as a bylaw (20(2)(d)); and
    - The arbitrator's order is final and binding on the municipalities (27), subject to judicial review provisions of the MGA.

Summary

This new Regulation derives from Part 17.2 of the MGA which sets out the terms and process for ICF's. It is important to note that the MGA, in requiring an ICF for each municipality, establishes a self-regulating process of ICF preparation, dispute resolution, arbitration and ultimately judicial review. Only municipalities and independent third parties (arbitrators and judges) will affect the process. The Municipal Government Board, Provincial Regulatory Agencies and the Minister of Municipal Affairs are not part of the adjudication or appeal process.

The Task Force is of the opinion that the matters considered by an ICF do not address planning matters exclusively, but all manner of municipal services such as emergency services, recreation facilities, infrastructure, etc. Moreover, there are many excellent arbitrators in the province and elsewhere who have a long and respected history of experience and fairness. We look forward to seeing both Registered Professional Planners and members of other disciplines work together to develop arbitration models that become a standard for cooperation and fairness throughout the province and Canada.

The Task Force has one concern, however, regarding the requirement for ICF's with all adjacent municipalities. Section 708.28(4)(b) of the MGA allows the Minister to exempt one or more municipal Councils from the requirement to adopt an ICF. The Task Force believes it is appropriate to add criteria as to when an exemption might be justified in the ICF Regulation.

This would then provide guidance for municipalities before they undertake a costly, time consuming process that may not be necessary or successful.

Recommendation
Include a section in the ICF regulation that specifies criteria where the Minister would exempt one or more municipal councils from the requirement to adopt an ICF.

Rationale

As we understand it, the intent of the ICF is to create cooperation between an urban municipality and the adjacent rural municipalities with respect to certain services. While not exclusively the case, a rural municipality that touches on multiple other rural municipalities is significantly less likely to have sufficient common interests that would justify an ICF. If there is no justification for an ICF between two adjacent rural municipalities, the ICF Regulation should likewise offer that exemption and include some criteria as to the conditions under which such an exemption might be considered. For example, Vulcan County is surrounded by six other rural municipalities. If the Minister identifies criteria within the regulation that would exempt Vulcan County from requiring an ICF with adjacent rural municipalities, it would reduce unnecessary expenses pursuing frameworks that have no significant value or benefit. Otherwise, we can foresee a scenario where the Minister is inundated with requests by multiple adjacent rural municipalities for exemptions. Establishing criteria in advance will significantly reduce unnecessary confusion and costs among municipalities and the Minister's office.

OFF-SITE LEVIES REGULATION

What's changing?

The proposed Regulation contains many principles and criteria from the existing Regulation and expands some criteria to provide additional flexibility. It includes the new infrastructure eligible to be funded by an off-site levy as identified in the revised MGA (emergency service facilities, etc). It states more clearly that municipalities must consult affected stakeholders throughout the off-site levy bylaw process. The Regulation requires periodic review of the levies rather than simply an annual report, and an MGB appeal process has been added.

Summary

The existing MGA Off-Site Levy Regulation 48/2004 identifies broad principles and criteria that apply to landowner consultation, process and the general content of off-site levies. The new proposed Regulation creates a more detailed consultation process and requires periodic review of the levies rather than simply an annual report. The draft Regulation also institutes a new MGB appeal process within 30 days of bylaw approval, something that was not included in the previous MGA. This new wrinkle provides municipalities, developers and the general public an opportunity to over time, further clarify off-site levy principles and criteria through MGB appeal decisions.

The current wording implies an appeal can be lodged by anyone - a member of the public at large, an aggrieved developer, a public interest group, etc. This offers the general public a window into the often complex and contentious off-site levy process, but could have the side effect of slowing down the business of governing. Overall, the Task Force welcomes the additional detail and adjudication provided by this Regulation.

Recommendations

- Add a definition of "stakeholder" to section 1 of the Off-site Levies Regulation to specify who is eligible to launch an appeal of an off-site levy bylaw under section 9 of the Regulation.
- Add a Regulation that allows the Municipal Government Board to refuse to hear an appeal if the Board considers it frivolous or vexatious.
- Establish an off-site levy appeal process as a component of the MGA and not just in the Regulation.

Rationale

While we agree that an appeal process is an appropriate element of off-site levy bylaws, not defining who is an affected stakeholder can become problematic. Generally, a municipal bylaw has little exposure to appeal except for intermunicipal disputes or judicial review. We believe such unfettered invitation to appealing the off-site bylaw as proposed can become counterproductive to the intent of the regulation. Could a member of the public living outside the municipality appeal the bylaw when they are not landowners within the municipality? Will a member of the public be able to trigger a costly and time-consuming process if the reasoning behind it lacks merit in the eyes of the majority? Who decides?

Moreover, can the MGB decide not to hear the appeal if it is of the opinion that upon initial examination, that the appeal is without merit? We believe the public would be best served if this intermediary step was included in the regulation.

The concept of instituting an appeal process for a municipal bylaw is significant, especially when that bylaw has significant financial implications for the future direction of growth of the municipality. The MGA establishes an appeal process for intermunicipal disputes, development permits and subdivision applications. The appeal function for off-site levy bylaws is equally if not more significant than the appeal of a development permit or subdivision application. Therefore, placing the authority for appeal within the purview of the MGA legislation rather than by Order In Council would be consistent with other MGA appeal processes.

CITY CHARTER REGULATION - APPENDIX TO THE MUNICIPAL GOVERNMENT ACT

What's changing?

Overall, the proposed City Charter allows for changes to a variety of Acts and Regulations and touches on the following:

- the capacity to pass new environmental bylaws and set associated penalties,
- flexibility for loans and loan guarantees for affordable housing,
- additional flexibility in tax assessment,
- additional classes of statutory plans for planning purposes,
- more flexibility in transit and parking enforcement,
- changes to the *Traffic Safety Act* including flexibility in addressing cycling infrastructure,
- supplementary safety code requirements to help achieve environmental objectives, and
- changes to other enactments that provide the cities with additional flexibility.

Municipal Government Act Changes within the Charter

- Part 16.1 of the Charter deals with climate change; specifically, Climate Change Mitigation Plans. These plans are a mandatory process to be adopted by resolution of Council. Matters to be addressed include renewable energy, adaptation to climate change, measuring greenhouse gas emissions, as well as specified optional matters such as flood preparedness and biodiversity management plus any other matter the council considers appropriate. Proposed plans include a public consultation program with a five-year review interval. The city must establish its first climate change mitigation plan on or before December 31, 2020.

- Section 635.1 allows the creation of additional statutory plans in addition to those already specified in the new MGA. This allows flexibility for addressing planning areas in a more detailed or less detailed manner as long as it is consistent with the other statutory plans.

- Section 640 includes a statement of flexibility for cities as follows ; "A City land use bylaw may prohibit or regulate and control the use and development of land and buildings in the City *in any manner the council considers necessary*. " (Italics added).

- Section 640 (2) enables the cities to prescribe permitted uses across multiple districts.

- Section 640 (2.2) enables the cities to modify the definition of food establishment in the Subdivision and Development Regulation, and create definitions for "school" and "hospital".

- Section 651.3 establishes that housing agreements are an interest in the land, and is binding on future owners of the property. This includes specifying the tenure of occupancy and ensuring the Affordable Housing Agreement will continue on the property after the land is sold.

Subdivision and Development Regulation Changes

Section 4 (6) of the proposed Subdivision and Development Regulation allows the cities to add or vary any other matter as a consideration to be contained in a subdivision application. Section 12 (5) enable the Cities to determine the uses within setbacks from landfills, waste storage sites, and wastewater treatment plants without Ministerial approval.

Other Enactments

A variety of other Acts and Regulations are captured in the City Charter. This includes the *School Act*, Weed Control Authority and *Traffic Safety Act*.

Summary

The draft City Charter is a tripartite agreement involving complex negotiations over a long time among Calgary, Edmonton and the Province of Alberta. The Task Force is not privy to the many trade-offs that occurred during that negotiation, nor do we wish to second-guess what could have been. While the Charter offers enabling legislation for flexibility in multiple Provincial Acts and Regulations, there are no new taxing powers for the cities.

From a positive planning viewpoint, the Charter requires the cities to enact a Climate Change Mitigation Plan (by resolution of Council) and allows Councils to enact new statutory plans that are outside the standard statutory plans identified in the MGA. It also allows more flexibility in the implementation of land-use bylaws and delegated decision-making. Other observations include the following points:

- The negotiations resulted in a positive opportunity for the province's two largest cities to be recognized as unique entities much the same as other provinces have recognized their major urban centres (specifically Vancouver, Winnipeg, Montreal, Saint John, and to a limited extent, Toronto).
- While there is not yet a clear process for continuing negotiations and amendments to the Charter, hopefully this will be clarified prior to the passage of the legislation.
- This is an opportunity to learn how the new statutory planning provisions, land-use bylaw changes and climate-related provisions of the Climate Change Mitigation Plan can be integrated into a consistent vision for Edmonton and Calgary. It will be interesting to compare and contrast each cities approach to the enabling legislation.

The Task Force makes no recommendation.