

Technical Memorandum

Transition Clauses

1 Introduction

As part of implementing a new comprehensive Zoning By-law, the City of Brampton (the “City”) will need to decide on a strategy to address development applications submitted before the enactment date of the new Zoning By-law. Without a strategy or approach in place, any application currently in process or submitted prior to enactment of the new Zoning By-law would have to be reviewed and potentially revised to meet the new Zoning By-law. For example, applications for building permits are made in accordance with the zoning by-laws in place at the time of the application. As such, a building permit application made on the basis of a previously-approved site plan may require a zoning update. Including transition clauses in the new Zoning By-law allows active applications submitted before the enactment date to be considered under the original by-law.

The objective of this Technical Memorandum (“Memo”) is to explore the appropriateness of transition clauses and to help inform and provide clear direction on transition matters for the City’s new comprehensive Zoning By-law. Section 4.4 of the Zoning Strategy Report (January 2024) recommends that the new Zoning By-law include a framework for transition. To explore this, this Memo provides a review and analysis of best practices and noteworthy approaches to transition clauses from other Ontario jurisdictions. The jurisdictions were chosen based on similar context to the City and recency. The best practice review considers the language used, applicable applications, and use of an expiry date or a sunset clause for establishing a timeline for transition. The analysis is provided in Section 2 of this Memo.

The Memo concludes with a series of recommendations for the new comprehensive Zoning By-law in Section 3, which will be confirmed through further consultation with interested parties.

2 Analysis and Best Practice Review

2.1 TRANSITION PROVISIONS

Recently, many Ontario municipalities completing new Zoning By-laws have incorporated clauses for transition of development applications that are in process or were recently approved. These clauses ensure that development applications will proceed under the requirements of the previous Zoning By-law, which was brought into effect at the time these applications were made or approved.

The best practice review presented in this section demonstrates the typical approach in other municipalities is to set out conditions these applications must meet to be considered under the

previous Zoning By-law. These conditions generally require that various conditions are met, such as:

- A complete application be submitted before the enactment of the new Zoning By-law;
- The application is deemed complete; and
- The application is approved/processed within a defined timeframe.

By including transition clauses, ongoing and approved applications do not need to comply with the new Zoning By-law in order to obtain or proceed to construction with a building permit. The new Zoning By-laws only apply to new applications submitted after its enactment date. This can provide certainty for proponents currently in the process of seeking approval for applications that their applications will be reviewed under the former Zoning By-law, thereby avoiding a dual review. It also has the potential to reduce appeals of the new Zoning By-law where applicants are concerned that the new Zoning By-law will introduce requirements they are unable to meet. In general, if the requirements of transition clauses are not met, then approval of the application will lapse, and a new application is required under the new Zoning By-law.

Within the transition section of the Zoning By-laws reviewed, each of the jurisdictions included a general clause setting out that all provisions and requirements within the by-law other than the transition section apply. Transition provisions for specific application types (e.g., building permit, site plan approval, etc.) followed, and each included the enactment date of the Zoning By-law within the clause. Including the enactment date within the clause gives readers a clear understanding of the final date on which an application must have been submitted an/or approved. Additionally, all of the jurisdictions referenced the previous Zoning By-law document number within the clauses (e.g., “complies with the provisions of Zoning By-law 1984-63”).

As an example, the City of Vaughan’s Comprehensive Zoning By-law was enacted by Council in October 2021 but later appealed to the Ontario Land Tribunal (OLT). Some of the appeals related to the transition provisions. Specific concerns raised included the application of the transition provisions to previously approved zoning by-law amendments, planning applications in process, planning approvals, and future planning and building permit applications. The transition provisions were repealed and updated via By-law 039-2022.

It is recommended that the City consider transition clauses for various types of applications. The types of applications that may require specific transition clauses are further discussed in Section 2.2 of this Memo. It is also recommended that the City include the enactment date within the clause to ensure clarity on the deadline by which applications under the former zoning by-law must have been submitted and/or approved.

2.2 APPLICATION TYPES

The transition framework will need to identify the specific types of applications that will be subject to transition. Of the best practices reviewed, the application types varied; however, all jurisdictions

explicitly state the types of applications that are subject to the transition framework. This typically included building permits and site plan approvals at a minimum. Beyond building permit applications and site plan approvals, the most common application types were Minor Variance, Consent, Plan of Subdivision, and Plan of Condominium. Although the City of Waterloo did not transition Minor Variance applications explicitly in the provisions, the City nonetheless processed minor variances concurrently to both Zoning By-laws, and Section 3.C.5 of the City of Waterloo's new Zoning By-law carries forward all previously approved minor variances to the prior Zoning By-laws.

Table 1 summarizes the jurisdiction scan. Note that Table 1 includes the City of Toronto for reference, recognizing that the transition provisions in Toronto have now expired.

As noted above, it is common for municipalities to include building permits, site plans, and minor variance applications in their transition clauses because they are likely to be affected by the new comprehensive Zoning By-law. A site plan, for example, can be subject to several iterations. The process for submitting and approving a site plan could become easily frustrated if multiple zoning by-laws apply. Some municipalities include transition for plans of subdivision and plans of condominium. However, this is not always necessary because any recently approved development-specific standards will likely be integrated through exceptions. As such, the transition provisions for Brampton should be developed specifically for Brampton and the impacts of the new Zoning By-law, as there is not one single accepted approach. Uniquely, the City of Kitchener not only transitioned previously applied for site plans, but they also allow for minor modifications to those site plans to be made after the new Zoning By-law came into effect, providing additional flexibility for landowners.

Consideration may also be given to transitioning Zoning By-law Amendments. The City of Toronto and City of Vaughan included transition clauses for zoning by-law amendments. Ongoing zoning by-law amendments should be processed so that they will amend the by-law in place at the time of the enactment of the amendment. It would be preferable for zoning by-law amendments to be integrated into the new Zoning By-law, and not solely subject to transition which would place an expiry on the approval. However, some landowners may find transition of Zoning By-law Amendments desirable to ensure that the previously approved meaning of their development will not be altered or interpreted differently, in the event that the new Zoning By-law has revised definitions, for example. For the City of Brampton, all Special Sections will be reviewed through the review of Special Sections and it is anticipated that any Special Sections for recent development that has not been built will be carried forward into the new Zoning By-law, to avoid frustrating ongoing development and construction (as discussed in the separate Technical Memo for Special Sections).

Table 1: Application Types that are Subject to Transition in other new Zoning By-laws

	Toronto, ON 569-2013	Kitchener, ON 2019-051	Oakville, ON 2014-014	Waterloo, ON 2018-050	Markham, ON 2024-19	Vaughan, ON 001-2021
Building Permits	✓	✓	✓	✓	✓	✓
Site Plan Approval	✓	✓(1)	✓	✓	✓	✓
Minor Variance	✓	✓	✓	✓(2)	✓(3)	✓
Zoning By-law Amendment	✓				✓(4)	✓
Consent			✓			✓
Plan of Subdivision		✓				✓
Plan of Condominium		✓				✓

Notes to Table 1:

- (1) The City of Kitchener transitions site plan approvals where a complete application was made (provided it met prior bylaw 85-1) as well as approvals of further minor modifications to Site Plans to approved site plans that were approved January 1, 2017 onwards.
- (2) The City of Waterloo’s transition framework did not explicitly transition minor variances, but all minor variances under consideration were processed as variances to the old and new Zoning by-laws. Further, Section 3.C.5 of the Zoning By-law carried forward all previously approved minor variances as prevailing over the new zoning requirements, provided the conditions of approval are satisfied.
- (3) The City of Markham’s new Zoning By-law transitions minor variance applications and also gives effect to previously approved minor variances.
- (4) The City of Markham’s new Zoning By-law transitions “Zoning Preliminary Review Applications” where the project complied with previous zoning by-laws. Otherwise, the Zoning By-law does not provide statements to transition zoning by-law amendments.

Many of the zoning by-laws reviewed include a definition of a “complete application” within the transition section to clarify if the provisions apply and avoid confusion on the status of the applications. The City has previously undertaken a review and update of policies related to complete application submission requirements, as per the *Planning Act* and introduced through Bill 109. Based on the City’s current administrative practices, an application may be deemed complete on the date that City staff review and confirm it is complete.

It is recommended the City include, at a minimum, transition provisions for building permit, site plan approval, and minor variance applications, for further consultation. The City is also recommended to include a definition for what is deemed a “complete application” for clarity where

transition provisions apply to site plan applications. Consultation will be undertaken to confirm if additional application types should be included. Transition for consents and plans of subdivision should generally not be required, as the Zoning By-law will likely incorporate the applicable minimum lot area requirements in the zone or the Special Section, and the Zoning By-law will likely contain general provisions that enable development to occur on existing residential lots that do not meet the minimum lot area or lot frontage of the zone. However, landowners/developers may wish to preserve previously applicable requirements such as for driveways, parking areas/garages, landscaping, lot coverage, and other matters which may have evolved under the updated general provisions and definitions of the new Zoning By-law. The inclusion of additional applications in the transition framework will increase the administrative cost but it may also help mitigate appeals. Transitioning these applications should be balanced with the need to implement updated, modern zoning requirements to support Brampton Plan.

Additionally, it is anticipated that any plans of subdivision which are subject to Special Sections and have not been built will be carried forward as new Special Sections in the new By-law, and thus should not be impacted.

2.3 EXPIRY DATE / SUNSET CLAUSE

An expiry date, also referred to as a sunset clause, is typically included within transition provisions to set a timeframe in which the previous Zoning By-law will continue to be administered for qualifying applications. Applications deemed complete based on conformity with the former Zoning By-law must satisfy this clause by obtaining a building permit within the given timeframe or the approval will be revoked, and a new application conforming to the new zoning by-law will be required.

Sunset clauses may prevent a rush of permit applications prior to a new Zoning By-law coming into effect. Based on the best practice review, applicants are generally given at least 3 years (in some cases longer) to complete their application under the previous Zoning By-law. For example, when the City of Toronto initially implemented Zoning By-law 1156-2010, the transition clauses were proposed to be in effect for 3 years after the enactment date. However, following several appeals and an Ontario Municipal Board decision, the City extended their sunset clause by 2 years, for a total of 5 years.

Of the jurisdictions reviewed, the City of Kitchener included general sunset clauses which were repealed within 3 years of the approval date. The City of Vaughan updated its transition provisions to grant 10 years. There is also precedent in some municipalities where the timing of the expiry dates are dependent on the application type. For example, the Town of Oakville and the City of Waterloo required 2 years for minor variance applications and 3 years for site plan applications. The City of Markham's transition of applications in process expires 3 years. Overall, an approach appropriate to Brampton should be identified.

Based on the best practice review, it is recommended that the City of Brampton implement a sunset clause as part of its transition provisions for at least three (3) years. The City may consider establishing different expiry dates for different application types. At a minimum, the City may require two (2) years for minor variance and building permit applications, based on the best practice review. It would be reasonable to provide additional time for applications that are earlier in the process or are more complex. Consultation will be undertaken to confirm the appropriate expiry of the transition provisions as discussed in this Memo and the new draft comprehensive Zoning By-law.

2.4 ENACTMENT LANGUAGE TO GIVE EFFECT TO TRANSITION CLAUSES

All Zoning By-laws include an enactment date and clauses that pertain to the repeal or replacement of former zoning by-laws and enactment of the new Zoning By-law. When dealing with transition provisions, the language used within the clauses referring to the repealing of former by-laws usually will take transition provisions into consideration. If the former Zoning By-laws are repealed, a legal question arises as to whether the Zoning By-law can make further reference to repealed by-laws, should this be needed to support the desired transition framework.

Some municipalities have incorporated language to avoid simply “repealing” the former zoning by-laws in order to continue to make reference to the former zoning by-laws. This includes the use of the term “supersedes” rather than “repeal”. This is useful where the new Zoning By-law must continue to make reference to the old Zoning By-laws, because they continue to apply. In the City of Toronto, the approach of “superseding” the old zoning by-laws was essential. The City opted to carry forward previous site-specific exception approvals as-is, including existing references to the former zoning by-laws under which they were passed. As such, to administer Toronto’s transition framework, the new Zoning By-law had to supersede and not fully repeal the old zoning by-laws. The City of Pickering has taken a similar approach in its new Consolidated Zoning by-law, by superseding the previous zoning so that the Exception zones can continue to refer to the definitions and sections of the previous Zoning By-law. The City of Pickering also repealed zoning in certain areas where the new Zoning By-law was able to fully integrate the previous zoning approvals.

Generally, most new zoning by-laws aim to repeal the previous zoning by-laws. The transition provisions limit references to the previous zoning by-laws to stating that transition can only be granted if the applicant complied with the previous zoning that was in force at the time. In Oakville, the previous zoning by-laws were repealed by Section 1, and the subsequent transition clauses stated that notwithstanding the repeal, the By-law will allow for transition of applications under previous zoning. The City of Markham’s Zoning By-law states that all prior zoning by-laws are superseded by the new Zoning By-law, and upon the new Zoning By-law coming into effect, the previous zoning by-laws are repealed. Markham’s new Zoning By-law excluded various areas from the new Zoning By-law and as such did not repeal prior By-laws. Notably the City of Waterloo’s

Zoning By-law recognizes and carries forward previous minor variance approvals to the previous zoning by-laws, but also repeals the previous zoning by-laws. It is more common for minor variances to be repealed (invalid) as the previous zoning by-laws are repealed. Minor variances are intended as temporary decisions and carrying forward all prior approvals without a review would generate a lot of risks and is not desirable. Previously approved minor variances could permit uses no longer allowed by Brampton Plan. As such, if any minor variances need to be carried forward, they should be subject to transition or they could be integrated on a case-by-case basis into the exception zone.

For the purposes of the City of Brampton's new comprehensive Zoning By-law, it is recommended that any clauses dealing with the enactment date of the new Zoning By-law repeal the former Zoning By-law, save and except to give effect to the specific transition provisions established in the Zoning By-law. Consultation will be beneficial to confirm the appropriate language for the City of Brampton. Combined with the transition provisions it appears to be appropriate to repeal the existing zoning as it applies to the applicable geography of the new Zoning By-law. The need to "supersede" the previous zoning is mainly tied to whether the previous zoning by-laws need to be retained to support interpretation of exception zones or some other specific purpose.

2.5 ZONING BY-LAW ADMINISTRATION AND APPEALS

The administration of the new and old Zoning By-laws in the event of appeals of the new Zoning By-law must also be considered by the Project Team. Given the breadth and scope of changes with the new Zoning By-law, it is anticipated that some appeals will be received as some landowners may not be satisfied with the changes as it relates to their development interests. Although the City and WSP will take measures to mitigate and prevent appeals, some appeals will not be preventable. The incorporation of a transition framework is a significant mitigating measure as it will allow existing application to proceed to construction against the prior zoning. Applicants subject to transition should be given the option of complying with the new zoning; the transition should not require adherence to previous approvals, but provide the option to adhere to the new zoning.

Generally, the City's objective would be to bring the new Zoning By-law into effect as quickly as possible so that the City can move forward on its new, more modern zoning framework. In the event of an appeal, the implementation of the Zoning By-law will be held up. Applicants can appeal the Zoning By-law as it relates to their site, or entire sections or components of the By-law as they apply City-wide. However, the effective date of the Zoning By-law will be the date of passing, and this could be retroactive as a result of an OLT decision months or even years after the Zoning By-law is passed by Council. As such, over a period of time, the City will have to administer old and new zoning, as the effective date will be uncertain. It is recommended that the new Zoning By-law incorporate features into the text document for future annotations about appeals. This will help

show the public clearly what sections of the by-law are in effect and which are still under appeal and not yet in effect.

3 Recommendations

Based on this Memo, the following recommendations are provided to inform transition clauses in the Zoning By-law. These recommendations will be refined and confirmed through additional consultation, and the Zoning By-law will be updated to respond to feedback:

1. It is recommended that the new Zoning By-law include a Transition framework that allows recent and ongoing applications and approvals to be recognized and move forward to construction. The Transition Clauses should refer to the specific types of applications that are eligible for transition and not subject to the new Zoning By-law. At a minimum, it is recommended that transition include building permit, minor variance, and site plan applications. There is also an option to include consent, part lot control, plan of subdivision or plan of condominium applications subject to further consultation. For increased flexibility for landowners, if desired, consideration may also be made to enable minor variances or minor revisions to site plan applications to site plans that have been transitioned.
2. It is generally recommended that ongoing zoning by-law amendment applications not be subject to transition, but rather they be processed and enacted to amend the zoning by-law that is in effect at the time of the amendment's enactment. Recent zoning approvals will be consolidated into the new Zoning By-law.
3. It is recommended that the new Zoning By-law refer to a "complete application" for clarity where transition provisions apply to clarify if the provisions apply and avoid confusion on the status of the applications. It is recommended that the City ensure the definition or understanding of a complete application is aligned with current administrative practices, wherein an application may be deemed complete on the date that City staff review and confirm it is complete.
4. It is recommended that the new Zoning By-law include a sunset clause as part of its transition provisions. This can help to clarify and confirm expectations for the length of time the transition clause will apply once the new Zoning By-law is in effect. Generally, this is in the order of 3-5 years. The administrative costs will need to be considered while balancing transition for property owners, recognizing that the timing of development and construction can take many years.
5. It is recommended that the new draft comprehensive Zoning By-law include enactment clauses that will repeal the previous zoning in the defined area. However, if there is a need to retain the previous zoning for interpretation (as in the City of Toronto), then the previous zoning should be superseded so that it can be relied on as a component of the new Zoning By-law.
6. It is recommended that further consultation be undertaken on the transition provisions. In particular, depending on the outcome of the review of Special Sections, it may be

necessary to include more or less generous transition provisions. If Special Sections pertaining to ongoing subdivisions are retained, for example, there may not be a need to include transition for plans of subdivision.

7. It is recommended that previously approved minor variances be subject to transition and should not be carried forward into the new Zoning By-law. Should any minor variances be needed, requests can be made and considered on a case-by-case basis to integrate a minor variance into an exception zone if requested and appropriate.
8. It is recommended that the new Zoning By-law incorporate features for future annotations about appeals. Further, the new Zoning by-law should integrate an “optional” transitional framework such that applicants should have the option of complying with the new zoning without having to obtain an approval to do so.