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PROVINCIAL CONSULTATION ON THE *ONTARIANS WITH DISABILITIES ACT*

The Community Services and Housing Committee recommends the adoption of the recommendations contained in the following report, February 25, 2004, from the Commissioner of Community Services and Housing:

1. RECOMMENDATIONS

It is recommended that:

1. Committee and Council approve the recommendations included in this report for submission to the Accessibility Directorate of Ontario, Ministry of Citizenship and Immigration as part of the provincial consultation on the *Ontarians with Disabilities Act, 2001* (ODA).
2. Regional staff attend the provincial consultation session on March 23, 2004 to formally submit and present the nine recommendations included in this report, namely:
 - The Province of Ontario must develop a complete and full funding framework that provides funding assistance to municipalities to cover both the operational and administrative costs associated with ODA implementation.
 - Time lines for the identification, removal and prevention of barriers to people with disabilities must provide flexibility for municipalities by being phased-in.
 - Base standards must be set by the Province to ensure a consistent approach across Ontario and be developed in consultation with stakeholders, including municipalities. The base standards must provide clear expectations but not over regulate in any particular area in order to allow for flexibility to address local situations.
 - The ODA, its regulations, or its associated policy directives must ensure that annual accessibility planning is integrated with the municipal annual business planning and budget cycle.
 - Amendments to the ODA must include additional definitions to clarify both the language in the Act and the expectations. Any changes made to the ODA must also give careful consideration to the impact the changes will have on other pieces of legislation. This is needed to avoid potential conflict, unnecessary cost and duplication as well as facilitate consistent implementation across the Province.
 - The Province must carefully consider the full impact of potential changes to the *Planning Act* and the manner in which they will be implemented when determining changes to the ODA. Any requirements or statements issued under the ODA or the *Planning Act* must clearly outline the expected outcomes.

- The ODA should be expanded to include requirements for the private sector in the identification, removal and prevention of barriers. The Province should have responsibility for overseeing the implementation of the ODA in the private sector.
 - Municipal Accessibility Advisory Committees must remain as an *advisory committee* to the municipal Council regarding services and structures within the respective municipal mandate.
 - The Accessibility Directorate of Ontario should provide overall support and guidance to all organizations responsible for the implementation of the ODA.
3. This report be shared with all York Region municipalities and with the Association of Municipalities of Ontario (AMO) for their information.

2. PURPOSE

The purpose of this report is to present York Region's recommendations regarding changes to be made to the *Ontarians with Disabilities Act, 2001* for consideration by the provincial government.

3. BACKGROUND

The current provincial government made a commitment during the last provincial election to "introduce, with the intent of passing within one year of forming government, a strong and effective *Ontarians with Disabilities Act*, following fully accessible, province-wide hearings". On January 28, 2004, the province announced that seven public meetings would be held across the province in February and March 2004 only. The meetings will focus on how to make the *Ontarians with Disabilities Act, 2001* (ODA) stronger and more effective and follows a series of "closed door" meetings held in January with various organizations including advocacy groups and the Association of Municipalities of Ontario (AMO). The government plans to introduce more meaningful legislation for people with disabilities this Fall.

The ODA was proclaimed in September 2002 and includes specific requirements for public sector organizations such as the provincial government, municipalities (including York Region), school boards and hospitals. Many organizations and advocacy groups have commented on the need to strengthen the ODA so that it extends to the private sector. Others have commented on the need for specific requirements regarding time lines or standards for accessibility for public sector organizations. The ODA does include penalties for non-compliance with ODA requirements but this section of the legislation has not yet been proclaimed. This issue is of particular concern for equity seeking organizations and advocacy groups. ODA implementation was and continues to be a challenge for the public sector. Given the broadness of the legislation, the lack of

financial resources and that very few tools were provided to assist public sector organizations with implementing the ODA, many municipalities and other public sector organizations were limited in their ability to implement the ODA.

York Regional Council met these challenges by adopting a strategic approach to implementing the ODA that is grounded in Vision 2026. This approach has enabled the Region to strategically focus its efforts in a measured way that supports and balances the needs of York Region's residents and has established York Region as a leader in the Province in accessibility planning. *Understanding Barriers: York Region's First Annual Accessibility Plan* was successfully developed with collaboration from all of the Region's corporate departments as well as York Regional Police and is recognized as a provincial model in terms of style and content.

4. ANALYSIS AND OPTIONS

4.1 Key Recommendations and Rationale

The provincial consultations now underway present York Region with an important opportunity to suggest potential changes to both the ODA and the way the implementation of the legislation is supported by the Province. Any changes made to the ODA will directly impact on York Region's ability to meet its legislated ODA requirements and balance these requirements with other regional priorities and budgets.

York Region has clearly demonstrated its support for the ODA. It is an acknowledged leader in and supporter of accessibility planning and has provided support to other municipalities. In order for York Region to support a strengthened ODA, changes made by the Province to the legislation must include complete and full funding assistance to support the implementation of stronger legislation and include each of the following recommendations. These recommendations have been developed with input from regional staff in every department. The Region's Legal Services Branch has also reviewed this report. Upon approval, these recommendations will be presented to the Province this month for their consideration.

4.2 Funding Framework

A funding framework that provides complete and full funding assistance to cover both the operational and administrative costs associated with ODA implementation is essential to assist the municipal sector in implementing the ODA. The funding framework must take into consideration the wide-range of areas impacted by the ODA and ensure that funding recognizes the importance of identifying and removing barriers for all types of disabilities. In the past many funding programs were directed towards enhancing accessibility for people with physical disabilities. This Act requires more.

The development of an appropriate funding framework is directly linked to the ability of municipalities to meet any new requirements that may be considered in a strengthened ODA such as standards and time lines.

Recommendation: The Province of Ontario must develop a complete and full funding framework that provides funding assistance to municipalities to cover both the operational and administrative costs associated with ODA implementation.

4.2.1 Time Lines

The funding framework must also support municipalities in meeting any time lines set by the Province to implement the ODA. This would enable municipalities to continue to move forward in the removal and prevention of barriers without placing additional pressure on the already strained municipal tax base.

Accessibility planning for 2005 will already be underway by the time new legislation is introduced this Fall. The province must consider the implications that the introduction of new legislative requirements and time lines will have on the accessibility planning process for 2005. In order for accessibility planning to continue smoothly, implementation time lines must be reasonable and phased-in to enable municipalities to adapt in an efficient and effective manner.

Recommendation: Time lines for the identification, removal and prevention of barriers to people with disabilities must provide flexibility for municipalities by being phased-in.

4.3 Base Standards

Municipalities provide a wide-range of services and base standards are needed to enable municipalities to have some flexibility to continue to meet the needs of other vulnerable populations. People experience disabilities differently and the standards must recognize and account for the uniqueness of individual circumstances. A complete and full funding framework and, phased-in approach to standards are essential to support municipalities in complying with any new base standards. One example for the funding framework regarding standards is to direct much needed resources for social housing providers to allow for the construction and renovation resulting in more accessible units.

Recommendation: Base standards must be set by the Province to ensure a consistent approach across Ontario and be developed in consultation with stakeholders including municipalities. It is important that the base standards provide clear expectations but do not over regulate in any particular area in order to allow for flexibility to address local situations.

4.4 Integration of Annual Accessibility Planning with the Municipal Annual Business Planning Process

The ODA requires the Council of every municipality to prepare an accessibility plan each year. The legislation however does not include a specific time line. Following proclamation of the ODA, the Ministry of Citizenship issued a statement with respect to the compliance dates, stating that municipality's first accessibility plan should be in place by September 30, 2003 and annually thereafter. However, an annual September 30th release date does not take into account the municipal fiscal year, which runs from January 1st – December 31st. As such, accessibility planning falls outside of the usual municipal

business planning process. This constrains the ability of municipalities to effectively plan and implement accessibility planning initiatives.

York Region has obtained informal approval to align the Region's accessibility plan with the business planning process and will be doing this. Other municipalities have followed York Region's lead in this area. However, given the direction that the Provincial government is moving in, it is important that accessibility planning formally become an integral part of the municipal business planning process. This will ensure fair access to resources and allow accessibility measures to be balanced with other municipal priorities and plans.

Recommendation: The ODA, its regulations, or its associated policy directives must ensure that annual accessibility planning is integrated with the municipal annual business planning and budget cycle.

4.5 Definitions and the Impact on other Provincial Legislation

The language included in the ODA is broad in nature which has resulted in uncertainty of what is required on the part of public sector organizations and raised differing expectations among residents. The ODA must clearly state what is required on the part of the organizations that must implement it.

The Province should begin by clarifying what "accessibility" means under the ODA. Currently there is no definition provided under the ODA and this has resulted in uncertainty and inconsistent implementation. "Procurement" also should be defined to clarify what is required under the ODA. In addition, the Province must provide criteria and specifications to assist the municipal sector in evaluating whether goods and services are in compliance with the ODA.

Any changes made to the ODA must also give careful consideration to the impact the changes will have on other pieces of legislation. The ODA is overriding legislation. To support its implementation, the province should therefore establish a process which ensures that other pieces of legislation impacted by the ODA are realigned to incorporate the requirements and spirit of the ODA and are not in conflict with the ODA. Other provincial ministries and stakeholders should be consulted to determine the impact of any changes on other pieces of legislation. Similarly, existing provincial programs, particularly funding programs, should be examined to ensure that any definitions, guidelines or requirements are realigned with a strengthened ODA to avoid potential conflict, unnecessary cost and duplication. A good example is the *Social Housing Reform Act* (SHRA) which should be realigned to incorporate any expansion to the definition of disabilities included in the ODA so that they are included in SHRA funding.

Recommendation: Amendments to the ODA must include additional definitions to clarify both the language in the Act and the expectations. Any changes made to the ODA must also give careful consideration to the impact the changes will have on other pieces of legislation. This is needed to avoid potential conflict, unnecessary cost and duplication as well as facilitate consistent implementation across the Province.

4.6 Changes to the *Planning Act*

The *ODA* has made two changes to the *Planning Act*. The effect of these changes is to add references to accessibility for persons with disabilities to all facilities governed by the *Act* as Matters of Provincial Interest under Section 2 of the *Act* and the second, in Section 51(24), requires that in considering plans of subdivision there be consideration of accessibility for persons with disabilities. The impact of these is that in carrying out their responsibilities under the *Act*, approval authorities must “have regard to” matters of Provincial Interest. The means in which this would be applied and the effect is uncertain at the regional and local level.

At the Provincial level, matters of Provincial Interest are frequently supported by Provincial Policy Statements issued under Section 3 of the *Act*. At the present time there is no PPS that speaks to the issue of accessibility. In addition to this, the “have regard to” standard for compliance with the PPS in the current *Planning Act* is under review, and the provisions of Bill 26 - *The Strong Communities Act, 2003* are proposing to change this standard to “shall be consistent with”.

Thus, should the Province release ODA criteria and/or standards as a Provincial Policy Statement (PPS) under the *Planning Act* (and the PPS is also being reviewed) then the Region (or other approval authority) in carrying out the Minister’s responsibilities under the *Act* to approve planning documents will be responsible for ensuring that decisions are consistent with the PPS. Decisions then would need comply, potentially to a higher degree with a PPS statement. If any *ODA* statement is not clear in its expectations and/or then there may be difficulties in determining whether decisions comply with the PPS and challenges to Regional decisions could be garnered on that basis.

Recommendation: The Province must carefully consider the full impact of potential changes to the *Planning Act* and the manner in which they will be implemented when determining changes to the *ODA*. Any requirements or statements issued under the *ODA* or the *Planning Act* must clearly outline the expected outcomes.

4.7 Expand the ODA to the Private Sector

An important element in the successful identification, removal and prevention of barriers that impact on people with disabilities is the inclusion of the private sector in the ODA. In order to achieve real change for people with disabilities to enable their full participation in Ontario, the private sector must become a partner in this process.

The Province should oversee the implementation of the ODA in the private sector. A single ministry such as the Ministry of Consumer and Business Services could be responsible for coordinating ODA implementation in the private sector to ensure consistency across the province and to ensure that implementation and enforcement does not fall to local municipalities.

Recommendation: The ODA should be expanded to include requirements for the private sector in the identification, removal and prevention of barriers. The Province should have responsibility for overseeing the implementation of the ODA in the private sector.

4.8 Municipal Accessibility Advisory Committees

Under the legislation, each municipal Council is the author of the accessibility plan and ultimately responsible for its implementation. As such, it is essential that the municipal Councils remain the key decision-makers in all matters related to accessibility and accessibility planning. The municipal Accessibility Advisory Committee plays a valuable role in providing guidance and advice on the development and implementation of the Plan but it is the municipal Council that is elected by, and ultimately accountable to the public.

Recommendation: Municipal Accessibility Advisory Committees must remain as an *advisory committee* to the municipal Council regarding services and structures within the respective municipal mandate.

4.9 Stronger Provincial Support for ODA Implementation

In order to ensure that ODA implementation proceeds smoothly across the province, the Ontario Accessibility Directorate must include an outreach component such as establishing a reward and recognition program to honour organizations that have removed barriers and acting as a clearing house which would receive information about barriers being experienced across Ontario. In addition, the province should establish an ombudsman office that would advocate on behalf of people with disabilities within the provincial government. This office would hear individual concerns and/or complaints regarding accessibility issues and assist in finding solutions.

Recommendation: The Accessibility Directorate of Ontario should provide overall support and guidance to all organizations responsible for the implementation of the ODA.

4.10 Relationship to Vision 2026

ODA implementation in York Region contributes directly to achieving the goals outlined in Vision 2026 by enhancing the ability of all residents to participate in all that the Region has to offer. The recommendations outlined in this report will enhance the ODA and the ability of York Region to implement the ODA to remove and prevent barriers for all York Region residents.

4.11 Next Steps

Public consultation on the ODA is being hosted by the Minister of Citizenship and Immigration who has responsibility for the ODA. She is being supported by her Parliamentary Assistant. The sessions will be held in the following cities: Windsor, Ottawa, Hamilton, Peterborough, Sudbury, Toronto and Thunder Bay between February 4 and March 25, 2004. The Toronto sessions will be held on March 23, 2004. This will be York Region's best opportunity to present to the Region's recommendations regarding potential changes to the ODA. Written comments are due to the Ministry by March 31, 2004. It is recommended that a copy of this report be formally submitted to the Ministry following Council approval.

5. FINANCIAL IMPLICATIONS

There are no specific financial implications associated with this particular report but it should be noted that a strengthened ODA that includes standards, time lines and penalties could cost municipalities (including York Region) millions of dollars in operational and administrative costs.

York Region supports and is a proven champion of accessibility planning because it will make it possible for residents to have better access to our services and programs. Accessibility planning like all our other businesses must reflect a balance of stakeholder priorities and the Region's ability to achieve changes over time within regional priorities and budgeted resources. *Understanding Barriers: York Region's First Annual Accessibility Plan* includes initiatives that will cost approximately \$1.6 million to implement. Of this, an estimated 30% of the cost will be funded by the Province of Ontario for initiatives relating to long-term care facilities and housing; 50% is related to transit and solid waste initiatives; and the remaining 20% will be for initiatives in other regional departments. All costs associated with this Plan are subject to approval of York Region's 2004 Business Plan.

Changes to the ODA that prescribe the manner in which implementation is to occur have great potential to change our ability to balance stakeholder priorities and achieve changes over time within regional priorities and budgeted resources. The province must therefore equip municipalities by providing complete and full funding, phased-in time lines and base standards that recognize the financial pressures on the municipal sector to support the implementation of the ODA.

6. LOCAL MUNICIPAL IMPACT

As per Regional Council's direction, an important part of York Region's ODA implementation is ongoing information sharing with the Region's local municipalities to avoid gaps and duplication. Any changes made by the Province to the ODA will impact on all municipalities including York Region's nine local municipalities. On March 5, 2004 Regional staff met to discuss provincial directions and York Region's plans with local municipalities, hospitals and school boards. This report will also be shared with the nine local municipalities for their information.

7. CONCLUSION

The public consultations now underway on the ODA present an important opportunity to assist the Province in making this legislation more effective and meaningful. There are tremendous benefits to be gained for our communities when people with disabilities can participate fully in all that our municipalities and the province have to offer. Yet the provincial government must be reminded that real change requires real support. York Region recognizes the importance of ensuring that residents can participate in all of the

Region's programs and services. This is enshrined in Vision 2026 and is echoed in the Region's long-term strategies and initiatives.

York Region has demonstrated its commitment to the ODA. The Region is a leader in accessibility planning. In order for York Region to support a strengthened ODA and to be able to continue to meet our ODA requirements, the Province must continue to include municipalities in all aspects of developing new legislation and provide the funding assistance and other supports outlined in this report.

The Senior Management Group has reviewed this report.