



Committee of the Whole Report

Report Number:	CAO2021-010
Meeting Date:	October 5, 2021
Title:	FLATO Lindsay Community Inc. (FLATO) Request for Support of a Minister's Zoning Order (MZO)
Description:	This report provides background and options for consideration, should Council support a request from FLATO for a MZO on lands abutting the east side of the Lindsay Settlement Area.
Author and Title:	Ron Taylor, Chief Administrative Officer Juan Rojas, Director of Engineering and Corporate Assets Richard Holy, (Acting) Director of Development Services

Recommendation(s):

That Report CAO2021-010, FLATO Lindsay Community Inc. Request for Support of a Minister's Zoning Order (MZO), be received; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

(Acting) Department Head:_____

Financial/Legal/HR/Other:_____

Chief Administrative Officer:_____

Background:

At the Meeting of September 7, 2021 Committee of the Whole adopted the following resolution:

CW2021-201

Moved By Councillor Dunn

Seconded By Councillor Veale

That the presentation by Katarzyna Sliwa and Matthew Cory, and Shakir Rehmatullah, regarding the vision and presentation of the FLATO Development in Lindsay, be received and referred to Staff for a report back at the October Committee of the Whole Meeting on recommended options and conditions for Council's consideration should Council wish to support the request for a Minister's Zoning Order (MZO);

That those conditions include options for public process, consultation and required studies for responsible development and financial impacts; and

That this recommendation be forwarded to Council for consideration at the next Regular Council Meeting.

Carried

Council adopted this recommendation at the September 21, 2021 Council meeting. This report addresses that direction.

Rationale:

Ministerial Zoning Order Proposal:

On September 3, 2021, FLATO Lindsay Community Inc. (FLATO) submitted a request to the Minister of Municipal Affairs and Housing for a Ministerial Zoning Order (MZO) on lands that are owned by the developer on the east side of Lindsay (See Appendix A). This was followed by a request at the September 7, 2021 Committee of the Whole Meeting for Council support of an MZO on lands that are owned by the developer on the east side of Lindsay. The MZO does not amend the City's Official Plan to include these lands in the Lindsay settlement area nor does it provide a land use policy framework for which to subdivide the land into a subdivision at this time.

FLATO has purchased approximately 306 hectares of land, approximately of which only 36 hectares are located within the Lindsay Settlement Area. The lands are centred along Pigeon Lake Road and extend from the Lindsay Settlement Area boundary to Fieldside Road, north to the former railway bed and south to the TransCanada Trail. The developer is only requesting MZO support over approximately 115 hectares of land outside the urban area. An updated planning brief has been provided in support of the proposal (See Appendices B and C). The concept plan proposes a community consisting of:

- 200 seniors-oriented and rental apartments, with the MZO requiring 10% affordable housing;
- 400 back to back townhouses, which together with the above-noted housing suggests that 30% of the proposed housing would be attainable;
- Overall approximate housing yield of 2,000 units consisting of single detached, semi-detached, townhouse, and apartment units;
- Two new commercial blocks east of CKL Road 36 and near the school to create a community hub;
- Protection and restoration of significant natural heritage features forming the basis for a green corridor containing trails throughout the community; and
- Provision of three new stormwater management facilities to service development and three new parks to serve new residents.

The submission contained some background letters on servicing and environmental impact assessment to support the submission (see Appendices D to F).

The original planning brief is contained in Appendix D to this report, which outlines the proposal in the Provincial and local policy context.

The servicing brief suggests that upgrades are necessary to contemplate development of these lands. Works would include upgrades to the water treatment and water pollution control plants, upgrades to the water distribution, including a new reservoir, and upgrades and twinning of sewage collection infrastructure, and construction of new stormwater management infrastructure.

The environmental brief indicates that the consultant has undertaken an environmental review program for the development lands. Additional work is necessary to review the impacts of development on the area's natural heritage features, including watercourses and a Provincially Significant Wetland complex, which extends onto the developer's lands.

While background materials have been reviewed, there is insufficient detail and analysis for staff to provide comment. Therefore, staff do not take a position on these briefs.

Planning Process for Urban Area Expansion

The following sections discuss the prescribed approach to the planning process in order to get an urban designation or an urban area expansion; the approach undertaken by FLATO; issues associated with Minister's Zoning Orders (MZOs) in general; and, issues with attaching conditions to MZOs.

2020 Growth Plan Policy Framework

Ontario's Growth Plan (see Appendix G) directs that settlement area boundaries are to be delineated in a municipality's Official Plan. The Growth Plan provides for expansions and adjustments to settlement area boundaries in reference to Municipal Comprehensive Reviews (MCRs). The MCR is a multi-year cross-divisional policy review program that results in a new official plan, or an official plan amendment (or series of amendments), is initiated by the municipality under section 26 of the Planning Act, and comprehensively applies the policies and schedules of the Growth Plan. The MCR is informed by a number of critical inputs including a Growth Management Strategy supported by a Land Needs Assessment (LNA), municipal master plans for servicing, transportation and waste disposal, and other supporting studies including, but not limited to, evaluations of natural heritage and environmental features, and prime agricultural lands. The program also includes input from the public, various stakeholders, and internal and external commenting agencies.

On June 14, 2021 the Ontario Land Tribunal ('OLT') established settlement area boundaries in the City's Official Plan (2012) for the City's four (4) urban settlement areas, being Bobcaygeon, Fenelon Falls, Lindsay, and Omemee. The Growth Plan provides three (3) options to changing a settlement area boundary through expansions or adjustments, summarized in the following chart:

Expansion Option 1 MCR (LNA)	Expansion Option 2 Before MCR	Adjustment Option Before MCR
<ul style="list-style-type: none">• Capacity in infrastructure and public service facilities, and are financially viable• Municipal master plans for water, wastewater and stormwater, and that avoid, minimize and/or mitigate negative impacts on watershed conditions and the water resource system		

<ul style="list-style-type: none"> Avoidance of NHS and prime agricultural areas, compliance with MDS, and that avoid, minimize and/or mitigate negative impacts on agri-food network Apply PPS and other provincial plans (ORMCP, LSPP, SPPs) to manage resources and protect public health and safety 		
	The lands being added are to a municipally-serviced settlement area, and there is sufficient reserve capacity for the added lands	
	The affected settlement area is not a rural settlement or in the Greenbelt Area	
	The lands being added are planned to achieve at least the minimum density target (and intensification in the case of an adjustment)	
	The lands being added will be fully accounted for in the LNA for the next MCR	No net increase of lands within the settlement area
	The lands being added are ≤40 ha	

There are two (2) approaches to settlement area boundary **expansions**:

- 1) **Through a municipal comprehensive review (MCR)** where a Land Needs Assessment has been undertaken that justifies the need for an expansion. A set of criteria (s.2.2.8.3) must then be met to determine the feasibility of, and the most appropriate location for, the proposed expansion:
 - i. sufficient capacity in existing or planned infrastructure and public service facilities, and, that these assets be financially viable over their lifetime;
 - ii. current master plans for water, wastewater and stormwater used to inform the expansion, and, that the services avoid, minimize and/or mitigate negative impacts on watershed conditions and the water resource system;
 - iii. avoidance of the Natural Heritage System and prime agricultural areas to the extent possible, as well as compliance with MDS, and, that any adverse impacts on the agri-food network be avoided, minimized and/or mitigated; and,

- iv. application of the PPS policies for Wise Use and Management of Resources and Protecting Public Health and Safety, and uphold the requirements of other applicable provincial plans, including the Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan and source protection plans.

2) **In advance of an MCR** provided:

- i. the lands being added satisfy the criteria under s.2.2.8.3 (listed above);
- ii. the lands being added are to a settlement area that is municipally serviced, and there is sufficient reserve capacity for the added lands;
- iii. the lands being added are planned to achieve at least the minimum density target;
- iv. the affected settlement area is not a rural settlement or in the Greenbelt Area;
- v. the lands being added and the associated forecasted growth will be fully accounted for in the land needs assessment associated with the next MCR
- vi. the lands being added are no larger than 40 ha.

The Growth Plan also provides an approach to settlement area boundary **adjustments** in advance of an MCR provided a series of criteria are met:

- 1) the lands being added satisfy the criteria under s.2.2.8.3;
- 2) the lands being added are to a settlement area that is municipally serviced, and there is sufficient reserve capacity for the added lands;
- 3) the adjustment helps meet intensification and density targets;
- 4) the affected settlement areas are not rural settlements or in the Greenbelt Area; and,
- 5) there is no net increase of lands within the settlement area.

The City has initiated its MCR program through its Growth Management Strategy ('GMS') that will apply the Province's Land Needs Assessment methodology. The Province has provided us with new 2051 growth targets of 117,000 people and 39,000 jobs. While these are minimums, it is prudent to go through the GMS exercise to determine the growth scenario options for urban area expansions. While the GMS

advances into next year, followed by natural heritage and agricultural system studies, and a commercial policy review, companion master plan updates to servicing and transportation are anticipated to get underway in a comprehensive and coordinated approach.

Through the GMS, the City will review all growth and urban expansion proposals and opportunities evaluated based on the following main principles: need for urban expansion, ease of servicing and related infrastructure costs, transportation needs, environmental impacts, and loss of prime farmland.

Because of the magnitude of the MCR program, and in particular the data required to satisfy the provincial criteria, the resulting new official plan (or official plan amendment) process is customarily driven by the municipality, and not an independent proponent.

FLATO MZO Request

FLATO is aware of the City's forthcoming MCR program, and has demonstrated their interest in participating in the GMS and subsequent policy studies and municipal master plan updates that will underpin the City's new Official Plan. The public consultation process is open to all members of the community.

Through a presentation to Committee of the Whole on September 7, 2021 FLATO has outlined their development vision for a "complete community" east of the Lindsay settlement area boundary, and has made a request that Council support a Minister's Zoning Order (MZO) to re-zone approximately 115 ha of land in Ops Township for urban uses. An updated draft version of the MZO is contained in Appendix H of this report.

According to FLATO, the MZO can be used to fast-track their development and provide the necessary commitment to development on the subject lands to rationalize their further investment and study.

FLATO is aware that notwithstanding the outcome of the MZO request, that the City will continue to advance its MCR process, and FLATO will need to submit Planning Act applications (and/or participate in City-led applications) for Draft Approval of a Plan of Subdivision and Official Plan Amendment(s) ('OPA') with required supporting studies to facilitate the development of the lands. The applications will be subject to a statutory public meeting(s) held by the City's Planning Advisory Committee and subsequent

appeals process. Whole-scale construction may only get underway once all of the necessary municipal approvals and permits are in place.

At this time, FLATO has proposed an amendment to the Township of Ops Zoning By-law 93-30 ('ZBA') as part of their MZO request to the Minister. Although it is not supportable in its current format, staff suggest it could be modified using the Town of Lindsay Zoning By-law as a framework to develop more appropriate development standards for the site, substantially in accordance with the development concept proposed. Of note here, is that zoning is used to implement Official Plan policy that governs use of the lands. In this case, the land use policies must first be developed through the preceding OPA process in order to be embedded into the site-specific ZBA for the subject lands.

While an MZO would establish the zoning for the site, its approval now would be out of sync with the necessary Official Plan policies that frame the zoning, such policies yet to be informed by the outcome of the MCR. Although MZOs do not need to demonstrate their consistency with the PPS and Growth Plan (with the exception of lands within the Greenbelt), the required Planning Act applications that follow will need to.

An MZO at this time is neither necessary for the development of the site, nor does it advance the statutory prerequisites under the Planning Act.

Issues with MZOs

Section 47 of the Planning Act allows the Minister of Municipal Affairs and Housing to issue MZO's to govern land uses within areas subject to the order. An MZO contains the following six (6) sections:

Definition – that identifies the applicable municipal zoning by-law (in this case, the Township of Ops Comprehensive Zoning By-law 93-30);

Application – that identifies the geographic area and map subject to the Order;

Permitted Uses – that identify the use of lands;

Zoning requirements – that identify the development standards;

Terms of Use – for the Order; and,

Deemed By-law – identifying its passage by the municipality.

It is well-documented that MZOs serve a useful purpose in the right circumstances. MZOs can advance shovel-ready developments quickly once the zoning is in place as a result of the MZO, for example during emergencies, or to expedite significant job

creation and investment, public health facilities, and affordable housing – all of which are matters of provincial interest.

An MZO within an urban area is not as problematic because growth and servicing has been studied and assigned to a property, as was the case with the CRAFT development in the Jennings Creek area of Lindsay, and appropriate Official Plan policies are already in place to guide growth and development expectations, requirements and implementation.

MZOs are a zoning tool, not an answer to viability or suitability for servicing allocation, capacity, servicing extensions, transportation networks, avoidance of natural heritage and prime agricultural areas.

Through the previously-mentioned studies, and others, such as the City's Development Charges Background Study, cost-effective growth can be implemented through aligned Official Plan policies, and other infrastructure and servicing background and technical studies. Should FLATO be successful in obtaining an MZO, the City would be obligated to update its Development Charges Background Study and implementing by-law to collect Development Charges from development on the FLATO lands. Amending the existing Development Charges By-law to capture the costs associated with the FLATO lands could result in a protracted process. The City is planning an update to our current by-law and associated background study. Council also has the option to impose an area-specific Development Charge specifically for the FLATO lands. More review is required to determine the best option and process.

Supporting an MZO is synonymous with committing to development, and committing to the required servicing and infrastructure needed to support that development without a full analysis. In this case, supporting the MZO request commits the City to a specific development expansion for Lindsay in the absence of the evaluation of all growth options to be presented in the GMS. Factors such as servicing cost effectiveness, loss of prime agricultural land, and impacts on natural heritage systems are not considered. This has the effect of predetermining some of the City's future growth, perhaps not in the most cost-effective manner and could constrain and/or limit substantive development potential elsewhere in Lindsay, or in the other three (3) urban settlement areas. Although FLATO is only requesting an MZO for approximately 120 hectares, this could provide a "directional pressure" on the GMS and MCR to bring the remaining 155 hectares of land owned by FLATO into the Lindsay urban area.

MZOs with Conditions

Although the Minister considers requests supported by a municipal Council resolution, the decision to make an MZO remains at the discretion of the Minister.

Through Section 47 of the Planning Act, the Minister may exercise any of the powers conferred upon councils by s.34 [Zoning by-laws], s.38 [Interim control by-law] or s.39 [Temporary use provisions] – but, s.34(11) to (34) do not apply to the exercise of such powers (i.e. notice, public process, appeals), nor does s.50(4) apply [Designation of plans of subdivision not deemed registered]. In other words, s.47 does not allow the Minister to impose any conditions – the Minister cannot fetter himself or his successor to the effect that the MZO will only be fulfilled once a condition is fulfilled. Therefore, should Council elect to impose conditions, these would not be imposed by the Minister in the Order.

Council is familiar with attaching conditions to the approval of development applications. Should Council choose to support this MZO request, staff strongly recommend that FLATO enter into an appropriate, and financially secured development agreement with the City, to require, among other things:

- Commitment to participate in the City's growth and development planning and servicing studies, including but not limited to, MCR through the GMS Project, municipal servicing and transportation master plan updates, and Development Charges Study update, and prior to building permits issued for development on the subject lands;
- Commitment to payment of any and all costs and fees typical of development, and inclusive of FLATO's proportionate share of infrastructure and servicing costs to support the proposed development (Growth pays for Growth concept);
- Commitment to obtain all necessary Planning Act approvals to implement the proposed development;
- Commitment to review and satisfy typical City conditions of development approval applied to subdivisions and non-residential development;
- Commitment to review and satisfy typical conditions of development approval from appropriate agencies and stakeholders, including but not limited to, Kawartha Region Conservation Authority, OMAFRA and First Nations; and
- Commitment to any "community benefits" offered to the community (for example, FLATO has committed to building 10% of residential units as purpose-built affordable housing units).

Other Alternatives Considered:

In consideration of FLATO's request that Council support its MZO request, Council has a number of options:

1. Support the request as presented, without conditions;
2. Support the request as presented, with conditions;
3. Defer support of the request until the statutory planning processes have been completed;
4. Abstain from supporting the request;
5. Deny the request.

Should Council support the request, then the following recommendations could be adopted:

That City Council supports the request from FLATO Lindsay Community Inc. for a Minister's Zoning Order (MZO) on approximately 115 ha of land immediately east of the Lindsay urban settlement area, and as generally outlined in Appendix B, C and H to report CAO2021-010;

That staff be directed to work with FLATO Lindsay Community Inc. to prepare a draft development agreement acceptable to both parties, and that the draft agreement be forwarded to Council no later than end of January, 2022 for review and approval.

As previously stated, the Minister cannot issue conditions of approval as part of an Order. Should Council support the request from FLATO, but an acceptable agreement cannot be finalized, then staff would report back to council in February of 2022, and recommend that Council request the Minister to revoke any Order(s) in support of this proposal.

Alignment to Strategic Priorities

The four strategic priorities within the 2020-2023 Kawartha Lakes Strategic Plan are:

1. Healthy Environment
2. An Exceptional Quality of Life
3. A Vibrant and Growing Economy

4. Good Government

The City will achieve a Healthy Environment through the protection and preservation of natural areas and prime agricultural land by promoting sustainable development. The City will promote an Exceptional Quality of Life through building social infrastructure by continuing to encourage mixed development, with a focus on affordable, attainable and purpose built housing; and, through ensuring recreation and leisure programs are available to all residents by increasing linkages in local trail systems to improve connectivity and maintaining "community hubs" such as parks, buildings and active spaces for social, healthy interactions. These priorities are implemented through the policy framework established by the necessary Planning Act applications to facilitate FLATO's development concept.

The City will demonstrate Good Government through proper asset management by ensuring municipal assets are well maintained and well managed; and, through increased efficiency and effectiveness of service delivery by completing the Official Plan and Secondary Plans. This priority is influenced by resolution of appeals, and completion of the MCR.

Financial/Operation Impacts:

Components of the City's Official Plan and the Lindsay Secondary Plan in its entirety are presently before the OLT; it remains unknown to what extent an MZO would impact resolution of the appeals at the OLT and progress made to date as well as future growth and Development Charges planning.

Consultations:

Ministry of Municipal Affairs and Housing

Attachments:

Appendix A – Proponent's MZO Request to Minister



Letter to Hon. Steve
Clark re MZO Applic

Appendix B – Updated Planning Brief from Malone Given Parsons



2021 09 21 MZO
Letter.pdf

Appendix C – Updated Planning Concept Plan from Malone Given Parsons



2021 09 21 MZO
Conceptual Vision B

Appendix D – Original Planning Brief from Malone Given Parsons



2021 09 03 -
Planning Letter - MC

Appendix E – Servicing Brief from Counterpoint Engineering



2021 09 03 -
Servicing Letter - Co

Appendix F – Environmental Brief from Beacon Environmental



2021 08 31 -
Environmental Lette

Appendix G – A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (and Amendment 1, 2020) – Policy excerpts



APTG Growth Plan
for the GGH - Excerpt

Appendix H – Revised Draft Ministerial Zoning Order from Malone Given Parsons



2021 09 28 Draft
MZO - Lindsay.pdf

Department Head Email: rtaylor@kawarthalakes.ca

Department Head: Ron Taylor

Department File: N/A