



Council Report

Report Number:	PLAN2022-028
Meeting Date:	September 27, 2022
Title:	2022 Telecommunications and Antenna System Siting Policy Updates
Description:	Proposed changes to the Telecommunications and Antenna System Siting Policy CP2018-014, as amended
Author and Title:	Ian Walker, Planning Officer – Large Developments

Recommendations:

That Report PLAN2022-028, **2022 Telecommunications and Antenna System Siting Policy Updates**, be received;

That the Council Policy CP2018-014 be updated, substantially in the form attached as Appendix C;

That the Telecommunications Facility Development Agreement be updated, substantially in the form attached as Appendix E; and

That Schedule E to By-law 2018-234, A By-Law to Repeal and Replace By-law 2016-206, as amended, being a By-law to Establish and Require Payment of Fees for Information, Services, Activities and Use of City Property in The City of Kawartha Lakes (known as the Consolidated Fees By-law) be updated, substantially in the form attached as Appendix F.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The telecommunications industry is regulated by the federal government through the Radiocommunication Act, which is primarily administered by Innovation, Science and Economic Development (ISED) Canada (formerly Industry Canada) and Health Canada. As telecommunications systems are regulated by the federal government, they are therefore not subject to the Provincial requirements of Planning Act documents such as official plans or zoning by-laws. However, ISED Canada considers the local 'Land-use Authorities' (LUAs) to have the best knowledge of land uses in an area. Therefore, ISED Canada encourages the development of protocols by the local municipalities (LUAs) to ensure that a clear process is established for the consideration of new telecommunications facilities within the community. Where a municipality has adopted a Telecommunications Policy, the applicant (typically, a 'Proponent') must receive a concurrence from the municipality that the proposal complies with the municipal Policy, before ISED Canada will issue an approval for the facility.

The following represents the timeframe of the City's involvement as the 'LUA' with Telecommunications applications in the City of Kawartha Lakes:

- May 22, 2012 – Council adopted Policy C 178 PLAN 001, the first 'Telecommunications System Protocol';
- July 15, 2014 – ISED Canada's 'Client Procedures Circular CPC-2-0-03, Issue 5' comes into effect (resulting from a federal consultation review of standards). The document outlines the requirements that apply to anyone (considered a 'Proponent') who is planning to install or modify an antenna installation of any type anywhere in Canada (typically, a 'Tower');
- May 22, 2018 – Council adopted Policy CP2018-014, the 'Telecommunications and Antenna System Siting Policy' to replace the 2012 'Telecommunications System Protocol', taking into account the updated 2014 ISED Canada standards;
- June 15, 2021 – Council adopted changes to CP2018-014, one of which was to delegate authority to the Director of Development Services for 'Uncontested' applications;

- July, 2022 – ISED Canada's 'Client Procedures Circular CPC-2-0-03, Issue 6' comes into effect (resulting from a recent federal consultation review of standards). The updates include updating the name of the department to ISED Canada throughout; official languages requirements to come into effect August 1, 2023; updated references to the Canadian Environmental Assessment Act to reflect the coming into force of the Impact Assessment Act; updated Transport Canada references and details; adopted the text proposed by NAV Canada regarding land-use proposal submission forms; and editorial changes and clarifications.

Current Approvals Process:

In accordance with CP2018-014, before a Proponent can seek an approval from ISED Canada, the Proponent and the landowner (the 'Owner') must enter into a Telecommunication Facility Development Agreement (the 'Agreement') with the City. The purpose of the Agreement is to protect the City's interests, and ensure that once the tower is no longer in use, it is properly decommissioned and removed from the property. This Agreement also ensures and confirms that the Owner, the Proponent, and the City all have the same understanding of the proposal, and the responsibilities of each party.

Rationale:

Process Streamlining

Since March of 2020 and due to COVID-19, a significant number of people in the Province of Ontario have shifted the use of their mobile devices and internet access in order to work remotely. In addition, all three levels of government (Municipal, Provincial and Federal) have recognized the need for rural communities to have reliable mobile phone and internet access, a need that has been exacerbated by the pandemic. The Eastern Ontario Regional Network (EORN) is spearheading a significant public-private partnership to improve cell service across the region, called the EORN Cell Gap Project (the 'Project'). The Project will provide 99 percent of the area with voice calling services; 95 percent of the area with standard-definition services (video-app calls, basic app usage and streaming of standard-definition video); and at least 85 percent with service levels that can support streaming high-definition video and apps. Both the federal and provincial governments have contributed to the Project, with some investment from the members of the Eastern Ontario Wardens' Caucus (EOWC). Rogers

Communications was selected through a competitive bidding process as the successful partner to contribute the balance of the funds.

Accordingly, the City saw a dramatic rise in the number of inquiries and applications in support of the installation of new telecommunications towers in the City from various Proponents, including Xplornet, Bell, Rogers, and other third party providers. A number of preliminary inquiries relating to some of these proposals have not yet formally translated into applications to the City (either for Preconsultation or the formal Concurrence request). To date, the City has received the following inquiries and applications since 2020 (Preconsultations followed by Concurrence Requests):

File Type:	Pre-Inquiries	Telecom Precons	Concurrence Requests
2020	Unknown	3 total	2 total (1 new, 1 re-concurrence) *2 Exemption Notices were received for existing tower upgrades or replacement*
2021	At least 4 detailed area inquiries and 8 general locations (in support of EORN)	21 total (*16 of which were reviewed since June 15 through updated process)	17 total (*13 of which were reviewed since June 15 through the updated process)
2022 (Up to September 1)	Unknown (some general locations of EORN towers identified, but no specific properties reviewed at site level)	16 total (including some 2021 EORN inquiries; 12 being completed in context of proposed updates to Council Policy)	10 total

Prior to June 15, 2021, every application requesting concurrence had to be referred to Council to receive support and a Council Resolution. This involved the preparation of a staff report for each request. To date (since 2012), a significant number of the requests for concurrence have been supported by staff, where there have been no outstanding issues identified by the public, an agency, or City staff ('Uncontested' requests). The major change of the Council Policy in June 2021 was to grant concurrence authority to the Director of Development Services on behalf of Council for Uncontested applications to reduce the amount of staff processing time.

Since then, a significant number of the 23 (13 plus 10) received applications noted above have either received concurrence at the staff level as 'Uncontested' requests, or are at various stages in the process. One request was formally referred to Council as a 'Contested' request (due to the proximity to environmental features on the property). Council has also considered one exemption request relating to a site access By-law within the City's road allowance: this Council exemption allows staff to continue processing the request as an 'Uncontested' request. There are currently six (6) requests that have been received but not processed yet due to the quantity of requests received by the City.

Any future applications which are 'Contested' will continue to be directed to Council for a decision on concurrence (including applications where there is no staff support; where an external agency has identified issues; or where there are outstanding public concerns or perceived public concerns). Staff will prepare a report identifying the relevant information to be considered, and provide a staff recommendation for Council's consideration. Staff will identify whether the request complies with Council's Policy or which provisions have not been complied with.

Staff also continue to implement refinements to the Telecommunications Preconsultation process and subsequent Telecommunications concurrence requests. There is a great deal of similarity between these types of applications. As a result, staff are recommending further refinements and clarifications as part of the current review of the Council Policy. These changes are noted in the Policy Update section below. It is anticipated that these updates will reduce staff time and effort in reviewing proposals, and remove any duplication of efforts in processing applications.

Telecommunications Policy Update

Staff will typically complete an annual review of existing Council Policies. Staff are using this opportunity to update the 'Telecommunications and Antenna System Siting Policy' to include some practice improvements, based on recent working experience with the 2021 updated Policy. Appendix 'B' is a Track Changes version of the current Council Policy and the changes are summarized below.

- Many of the changes include wording and policy clarifications, to ensure consistent interpretation;
- Some of the definitions have been further clarified, reworded, or new ones added;

- The Fees By-law is updated, to recognize the level of staff involvement and work on the various Concurrence requests in a tiered approach;
- Where the concurrence request is on a property in public ownership (Municipal, Provincial or Federal), the City will exempt the requirement for a Development Agreement between the Proponent, the City and the Owner. Any necessary provisions of the Development Agreement can and would be captured in the relevant Lease Agreement with the Provider;
- Road access via private roads could now be permitted in rural areas of the City;
- Policies relating to process have been reworked to provide greater clarity for submission expectations, approval process, and approval timelines;
- Where no staff or agency issues are brought forward through the Preconsultation process (for example, it complies with the Council Policy requirements for all setbacks, access, etc.), the follow up Concurrence request can be fast-tracked for processing, including a reduced application fee. This change will help to expedite the overall process;
- The expectations for complete applications has been clarified;
- The Policy includes clarification on the larger circulation area for public notification introduced in the 2021 amendment. The ISED Canada default standard requires notification to all landowners within three times the height of the tower, taken from the outermost support (guyed wire anchor, etc.). The proposed update confirms, for clarity, that this ISED Canada requirement will still apply, and the City's required additional property circulation does not supersede the ISED Canada standard, but instead compliments it. In addition to the ISED Canada standard, the City requires that the Proponent will include notice to all assessed landowners located within 120 metres of the host property boundary in rural areas, and to all assessed landowners within 60 metres of the host property boundary in urban areas. This eliminates the possibility where abutting property owners risk not getting notified if the host site is fairly large, and the tower is proposed to be placed more than three times tower height from the property boundary, in order to avoid direct notification to the neighbours;
- Staff are proposing two exceptions to the 120 metre neighbour circulation noted above – if the tower is located on the host property more than 500 metres from the nearest property boundary, or if the neighbouring properties are located outside the City (for example, this can be achieved on portions of Longford Reserve), the 120 metre neighbour circulation would not be required (i.e. they are subject to only the default ISED Canada standards);

- The Policy includes updated references to 'Uncontested' and 'Contested' applications. For clarity, any Contested applications will be identified as being contested by staff (for not complying with all the Policy requirements), or contested through the Proponent's Public Consultation process (they comply with the Council Policy);
- The Policy requires the host property Owner to be a signatory to the Agreement. It is anticipated that each property Owner will have a binding agreement between them and the Proponent – that agreement may contain a provision where the Proponent assumes all cost and responsibility to remove a tower from the property once the tower reaches the end of life. In the unlikely event that a Proponent does not fulfill their obligation to remove a derelict tower (for example, if the Proponent goes bankrupt), the expectation is that the Owner would pursue removal of the tower, such that the City does not need to enter the property to have it removed. The clause in Section 24.1 of the Agreement is to ensure the Proponent is responsible to remove the tower, but also ensures that a backup mechanism is available to the City, should the need arise. This also protects the ratepayers of the City, by not placing a financial burden on the City;
- The Policy also clarifies that any tax arrears are required to be paid in full, and the property in good standing before the City can enter into an Agreement with the Owner and Proponent;
- The Policy provides direction for re-concurrence, in the event the Proponent receives Concurrence from the City but is not able to construct the tower within the allotted 3 years as directed by ISED Canada; and
- The Policy requires the Proponent to confirm with the submission of all drawings and/or reports whether they supersede any previous drawings or reports submitted as part of the review (standard practice).

Staff feel that these changes will lead to improved processing times and expectations for processing new applications by providing greater clarity in the process.

Template Agreement Update

The attached proposed amendments to the template agreement reflect the result of negotiations between the City and the various telecommunications providers that have a presence within the City. The City has made substantive concessions to come to agreement with the providers. The following list reflects some of these changes:

- Acknowledges the scope of municipal jurisdiction vis-a-vis federal jurisdiction, in the matter of telecommunication towers;

- Is reflective of the fact that the City will not be requiring securities equivalent to the cost of and to ensure completion of the tower itself, rather, that the City will be taking securities for landscaping - when necessary - and to ensure the roads remain clear of debris during construction;
- Requires the City pay fair market rent if the telecommunications provider consents to the City's co-location on the provider's tower (as opposed to the City being entitled to free co-location as a term of the agreement);
- Provides additional time to the telecommunications provider to enter into a further lease agreement with the property owner following the termination of an existing agreement (up to 1 year following the termination of the agreement, up from 90 days); and
- Provides more balanced indemnification provisions (i.e. equally favourable to the provider and to the City, as opposed to favouring only the City).

Fees By-law Update

The fees by-law will be updated to better reflect the amount of staff effort in processing applications. Staff recommend the following revised fees for Telecommunications:

- | | |
|---|-------------------|
| • Preconsultations | \$400.00; |
| • Plans Only (City Property) | No Additional Fee |
| • Plans Only (Provincial or Federal Property) | \$500.00; |
| • Non-contentious Applications | \$1,500.00 |
| • Contentious Applications | \$2,500.00 |

It is expected that Providers will work closely with City staff at the earliest stages of their projects, in an effort to resolve any locational issues prior to submitting a Preconsultation application, which in turn will result in more non-contentious applications.

Applicable Provincial Policies:

While telecommunication systems are a federally-led initiative, the Province also recognizes the importance of telecommunications infrastructure and encourages further systems development to meet current and projected service demands in its policy documents, including the Provincial Policy Statement, 2020 (PPS) and A Place to Grow:

Growth Plan for the Greater Golden Horseshoe, 2019, and including Amendment 1, 2020 (Growth Plan). The proposed new updates to Policy CP2018-014, as amended, continues to fulfill the objectives of these policies.

Alignment to Strategic Priorities

The Council Adopted Strategic Plan identifies these Strategic Priorities:

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

The proposed updates align with the 'Good Government' priority by increasing the efficiency and effectiveness of service delivery by continued streamlining of the process of concurrence for new telecommunication towers in the City. The updates will also align with the 'Exceptional Quality of Life' and 'Vibrant and Growing Economy' priorities by helping facilitate better access to phone and internet services in the City and especially in rural areas.

Financial/Operation Impacts:

There are no direct financial considerations for the City, however there will be some new cost and time savings by reallocation of staff time and efforts to other matters.

Servicing Implications:

There are no servicing considerations for the City.

Consultations:

The Realty Services Division, Public Works Department, Engineering and Corporate Assets Department, Revenue and Taxation Division, Conservation Authorities, and Ministry of Transportation Ontario (MTO) have been consulted on these proposed policy amendments.

Development Services – Planning Division Comments:

The proposed Policy updates continue to follow the ISED Canada standards, while streamlining the processing of applications. The relevant Departments and external agencies have been consulted on the proposed updates. Staff respectfully recommend that Council **approve** the proposed changes to the Policy.

Attachments:

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please contact Ian Walker, Planning Officer – Large Developments, (705) 324-9411 extension 1368 or iwalker@kawarthalakes.ca.

Appendix A – Council Policy CP2018-014, as amended, dated June 15, 2021



PLAN2022-028
Appendix A.pdf

Appendix B – Proposed Changes to CP2018-014, as amended – Track Changes Version



PLAN2022-028
Appendix B.pdf

Appendix C – Proposed CP2018-014 as Amended – Draft, September 2022



PLAN2022-028
Appendix C.pdf

Appendix D – Updated Telecommunications Facility Development Agreement Template
– Track Changes Version



PLAN2022-028
Appendix D.pdf

Appendix E – Updated Telecommunications Facility Development Agreement Template



PLAN2022-028
Appendix E.pdf

Appendix F – Updates to Schedule E of By-law 2018-234, the Consolidated Fees By-law



PLAN2022-028
Appendix F.pdf

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