



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: May 24, 2011

SUBJECT: Report PLPD11-016
Proposed Telecommunication Structures Policy

PURPOSE

A report to recommend a Corporate Policy and Procedure for a municipal consultation process with respect to the siting and design of telecommunication structures within the City of Peterborough.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD11-016 dated May 24, 2011, of the Manager, Planning Division, as follows:

- a) That Council adopt a Telecommunication Structure Policy to encourage productive consultation between proponents and the City, in compliance with Section 5 of the federal Radiocommunication Act, in accordance with the Draft Policy, attached as Exhibit 'A' to Report PLPD11-016.
- b) That Council adopt a Telecommunication Structure Procedure to implement the Policy, to provide a framework for productive consultation between proponents and the City for the siting and design of telecommunication structures in a manner that is meant to address local land use and public concerns, attached as Exhibit 'B' to Report PLPD11-016, be received.
- c) That the City's Lease Committee be authorized to enter into commercial leases with providers for installations on City property where the proposed tower is exempt from the requirement for Public Consultation in accordance with the City Telecommunication Structure Procedure.

BUDGET AND FINANCIAL IMPLICATIONS

The procedure as drafted, anticipates that the proponent is responsible for costs associated with all municipal notice requirements related to consultation for a proposed telecommunications structure. In addition, processing applications for telecommunication structures is a staff-intensive undertaking. Each proposal requires approximately 20 hours of staff time to administer. The staff cost is borne by the City. If the City becomes involved in an Impasse Process as set out by Industry Canada, the City will also be responsible for the costs in defending its position.

INTRODUCTION

The proposed Telecommunication Structures Policy and Procedure has been prepared in response to Council's request for a local protocol to provide a public consultation process that is managed at a local level. The introduction of municipal policy is typically adopted by Council and implemented by a procedure that is prepared and approved at an administrative level. In this instance, Council has expressed specific interest in the details of the procedure including the notice requirements as well as establishing site selection preferences of the City. In this extraordinary circumstance, Staff is recommending that Council adopt both the policy and procedure as noted in the Recommendations of this report (PLPD11-016).

An invitation was extended to representatives from Industry Canada and Health Canada to attend the May 24, 2011 Planning Committee Meeting, however, they have advised that they were unable to attend.

OPTIONS FOR THE CITY

The adoption of a policy provides a forum for communication, however, the City of Peterborough, as a Land Use Authority has the following options in relation to the establishment of a local protocol for public consultation related to the installation of telecommunication structures:

1. Council can decide NOT to adopt a policy or a protocol and receive this report for information purposes, requiring proponents to follow Industry Canada's default protocol. Staff would comment directly to Industry Canada on site plan related matters.

2. Council can adopt a modified policy that ensures broader communication and notification, but excludes Council from the process. This would include the requirement for public notice and comment from local agencies and department on a narrowly defined scope, but Council would stay out of rendering a position.
3. Council can adopt the proposed policy and implementation procedures as attached. This provides for an optimal forum for communication, however, it does have the potential of putting Council in a difficult position to constantly take a stance on proposals where it does not have approval authority and on issues that Industry Canada has already determined are not relevant to Industry Canada's decision process.

BACKGROUND INFORMATION

The telecommunications industry is completely regulated by the federal government. The primary federal departments which regulate the telecommunications industry are Industry Canada and Health Canada. Nevertheless, the impact of telecommunication facilities is felt at the municipal level. In 2007, concern was raised regarding the siting of telecommunication towers for Telus Communications, including a proposed tower at 16 Lansdowne Street East and another at 868 Valleyview Drive. Committee of the Whole requested staff to prepare an information report regarding the installation of telecommunications facilities on January 14, 2008. Report PLPD08-015 was brought forward to Planning Committee on February 19, 2008. A copy of Report PLPD08-015 is attached to Report PLPD11-016 as Exhibit 'C'.

Council passed the following resolution with regard to Report PLPD08-015:

"That Council approve the recommendations outlined in Report PLPD08-015 dated February 19, 2008, of the Director of Planning and Development as follows:

- a) That Report PLPD08-015 pertaining to the installation of telecommunication facilities be received for information; and***
- b) The Planning Staff continue to liaise with Industry Canada on a location protocol for municipal consultation pertaining to the siting of antenna systems in the City of Peterborough.***
- c) That Council request advice from the Peterborough County-City Health Unit concerning the health effects posed by telecommunication facilities.***
- d) That the Valleyview site be excluded from consideration as a Telus Telecommunication tower site and that Industry Canada be so notified.***

Industry Canada and Telecommunication Industry Consultation:

Subsequent to the above motion, City staff consulted with representatives from Industry Canada, Legal Counsel for Telus, Rogers and Bell Mobility, and the City's Associate Solicitor, regarding the establishment of a municipal consultation process. A draft policy and procedure was prepared, using Industry Canada guidelines, together with a review of municipal policy and procedure for other municipalities and including practices similar to other public consultation requirements imposed by the City of Peterborough for applications under the Planning Act, R.S.O. 1990, c.P.13.

Health Effects:

City Staff also consulted with Peterborough County-City Health Unit regarding the health effects posed by telecommunications facilities. The Health Unit has responded based on recent literature, concluding *"From the recent literature on Radio Frequencies, one could conclude that there are many uncertainties in the science. Although there is no convincing scientific evidence to support lowering the limits of Radio Frequency exposure, there are limitations in the body of research and the possibility of harmful health effects from Radio Frequency exposures cannot be ruled out."* Health Canada is participating in ongoing studies, coordinated by the World Health Organization *"to verify reported biological effects and to characterize any associated human health risks."* Health Canada sets guidelines for exposure to Radio Frequencies through Safety Code 6, including regulations for exposure limits from telecommunication towers. *"Health Canada's guidelines for exposure to RFs (known as Safety Code 6) protect the public from short term, high exposure effect of RFs."* This is regulated through Industry Canada.

Information from the Toronto and Hamilton Boards of Health have also been reviewed by Planning Staff. City Staff are not health professionals and therefore, can not comment on the health data. However, some of the common points being made by the health professionals can be summarized as follows:

1. The public is exposed to a variety of Radio Frequency (RF) fields from a variety of sources including cellular communication towers, television, radio, emergency responders (police, fire, EMS), taxi companies, pager services, baby monitors, microwave ovens, cordless phones, global positioning systems, couriers, wireless local area networks (WLANS), all use RF energy to allow communication to occur.
2. The World Health Organization points out that the body absorbs up to five times more of the signal from FM radio and television than from cell towers.
3. RF energy is strongest at its source, and rapidly diminishes with distance.
4. The World Health Organization reports that to date, the only health effect from RF fields identified in scientific reviews has been related to an increase in body

temperature from exposure at very high field intensity found only in certain industrial facilities.

5. There is no scientific basis to support a conclusion that individuals living in communities with more stringent exposure standards than those in Safety Code 6, receive a greater level of protection.
6. Health Canada has been taking part in the International Electromagnetic Fields Project, coordinated by the World Health Organization. The goals of this project are to verify reported biological effects from electromagnetic fields and to characterize any associated health risks to humans.

Health Canada has recently provided the following information, in response to comments provided by a local resident regarding the proposed tower at 184 Marina Boulevard:

“Over the past decade, there has been public and media interest on the safety of exposure to radiofrequency (RF) electromagnetic energy, such as that from wireless devices, including cell phones, cordless phones, cell towers and Wi-Fi equipment. Recent media coverage includes selected reports or opinions from some scientists who have said these devices could pose a health risk. However, these reports/opinions are considered controversial and do not reflect the mainstream view of experts in this subject area.

Radiofrequency exposures from wireless devices pose no known risks to human health, provided that they comply with Health Canada's Safety Code 6 - Limits of Human Exposure to Radiofrequency Electromagnetic Energy in the Frequency Range from 3 kHz to 300 GHz.

Health Canada's mandate with regard to human exposure to RF energy from wireless devices is to carry out internally funded, unbiased research into possible health effects, monitor the scientific literature related to such effects, and develop exposure guidelines such as Safety Code 6. The Code was last updated in October 2009. The limits specified in Safety Code 6 for public exposure apply to everyone, including children and pregnant women, and allow for continuous 24/7 exposure.

As you may be aware, wireless devices are regulated by Industry Canada who enforces compliance of these devices with safety standards outlined in their regulatory documents. The safety standards developed by Industry Canada use part of the human exposure guidelines found in Safety Code 6.”

Exhibit 'D' to Report PLPD11-016 includes information provided by Health Canada, including website connections of recent scientific literature.

Industry Canada is clear that it does *not* consider questions about the validity of Safety Code 6 or proposed effects of a proposed antenna system on property values or municipal taxes as relevant concerns.

ANALYSIS

Public Consultation:

The Minister of Industry has the authority to approve all telecommunications structures sites as set out in the Radiocommunication Act, 1985. Industry Canada regulates the installation of telecommunication towers. Industry Canada's Client Procedures Circular (CPC-2-0-03, Issue No. 4) calls for consultation with the City and the public, however, the approval authority for telecommunication towers is Industry Canada and not the City.

The City of Peterborough, as the local Land Use Authority (LUA) has the ability to set out a procedure to facilitate public consultation and agency/department consultation related to a proposed telecommunication structure siting within the City. The intent of this procedure is to ensure productive consultation between proponents and the City for the siting and design of telecommunication structures in a manner that is meant to address local land use and public concerns. In the instance where the City has a consultation procedure, Industry Canada requires proponents to follow it, prior to obtaining approval from Industry Canada. If the City disagrees with a proposal as a result of the consultation process results, and does not concur with the installation of a telecommunication tower at a certain location, Industry Canada will follow its process to break the impasse and render a final decision. In such an instance, where Industry Canada initiates this procedure, the City will be expected to defend its position. Industry Canada will not give weight to a defense that includes health and/or property values.

Industry Canada's Default Protocol:

If the City does not adopt a policy or procedure with regard to public consultation, a proponent is required to follow Industry Canada's default public consultation procedure as outlined in its Client Procedures Circular (CPC-2-0-03, Issue No. 4). The default process has three steps as identified in Section 4.2 of CPC-2-0-03 whereby the proponent is responsible as follows:

- "1. provides written notification to the public, the land-use authority and Industry Canada of the proposed antenna system installation or modification (i.e. public notification);*
- 2. engages the public and the land-use authority in order to address relevant questions, comments and concerns regarding the proposal (i.e. responding to the public); and*
- 3. provides an opportunity to the public and the land-use authority to formally respond in writing to the proponent regarding measures taken to address reasonable and relevant concerns (i.e. public reply comment)."*

While Industry Canada recommends that each Land Use Authority develop a local protocol, Industry Canada has also indicated to the City that it may exempt a proponent from requirements contained in a local protocol that are more stringent than Industry Canada's default protocol.

Recent Practice in City of Peterborough:

In the absence of a formal procedure, the City's draft procedure has been followed over the past several months for proposals to introduce new telecommunications structures. Due to the proximity of some sites to lands zoned to permit residential use, two of the proposed locations have required a formal Public Consultation process. For proposed sites not located near lands zoned to permit residential uses, the consultation process has been limited to contacting agencies and departments. Although the proponents have agreed to follow our Draft Procedure, staff does not have the authority to exempt such proposals from Industry Canada's Default Public Consultation Process. Industry Canada makes the final determination whether it is satisfied that the proponent has met the requirements contained within its current circular.

Council has recently considered a report related to the proposed installation of a monopole telecommunication structure to be located at 485 Parkhill Road East. A resolution of Council related to this proposal has been forwarded to Industry Canada, indicating its opposition to the placement of a tower at this location.

Revisions to City's Draft Procedure:

In addition to the comments related directly to the Parkhill Road proposal, Council requested that the City's Draft Procedure be amended to have the following effect:

1. That in all areas zoned for residential purposes, new applications for communication towers that exceed a maximum height of 15 metres not be supported by the City.
2. That in all areas zoned for non-residential purposes, new communication towers that are designed to serve only a single provider not be supported by the City.
3. That cell tower proponents provide health data.
4. That proponents be directed on a priority basis, to lands and facilities owned by the City of Peterborough and the City of Peterborough Holdings Inc.

The Draft Procedure, attached as Exhibit 'B' to this report (PLPD11-016) has been amended in accordance with the direction of Council as noted above. Industry Canada excludes certain installations from the requirement to consult with Land Use Authorities. Proposed towers with a maximum height of 15m are automatically excluded from the requirement to consult, and therefore, no specific provision has been included. In addition, it is noted that the draft procedure anticipates the same requirement for consultation on City owned lands as it would for private property. As such, it is

anticipated that very few (if any) City owned properties would be exempt from the requirement for full public consultation, regardless of the size of the parcel, based on the distance from the property line to residential and school lands versus measuring the distance from the tower base.

The following requests have also been made by individual Councillors for consideration:

- 1. Increase the distance of the circulation requirements from a minimum of 120m from the property to a minimum of 400m from the property boundary.**

Industry Canada's Default Public Consultation Process requires proponents to provide a notification package to the local public, neighbouring land-use authorities, businesses, and property owners within a radius of three times the tower height, measured from the tower base or the outside perimeter of the supporting structure, whichever is greater. The Draft Procedure proposes that notice be provided to all owners of land within a minimum distance of 120m from the perimeter of the property or three times the tower height (measured from the perimeter of the property), whichever is greater. This notice requirement is more stringent than that imposed by Industry Canada. The proposed requirement for notice to land owners within 120m radius is consistent with the notice requirements under the Planning Act for an Official Plan Amendment and/or a Zoning By-Law Amendment.

Industry Canada has commented on an earlier version of the Procedure and has indicated that it may not be able to support a municipal protocol which is more stringent than its own and could exempt a proponent from such requirements on a case-by-case basis.

- 2. No exemption from written public notification for proposals subject to the City's protocol, therefore, requiring that notice be provided to all property owners within 120m of the property upon which the proposed tower might be located.**

The Draft Procedure has been designed to encourage location outside of residential areas by providing exemption from full public consultation for towers proposed on lands more than 120m from lands zoned to permit residential use or from lands upon which an elementary or secondary school is located. A newspaper notice is required in all instances where a tower is proposed to exceed 30m in height. The Draft Procedure is written to require proponents of towers on lands within 120m of lands zoned to permit residential use or from lands upon which an elementary or secondary school is located, to provide notice to property owners within 120m or three times the tower height (measured from the perimeter of the property), whichever is greater; hosting of a Public Information Session; and Council consideration.

3. Requirement for a process and submission of information similar to a Class Environmental Assessment (EA) for each proposal.

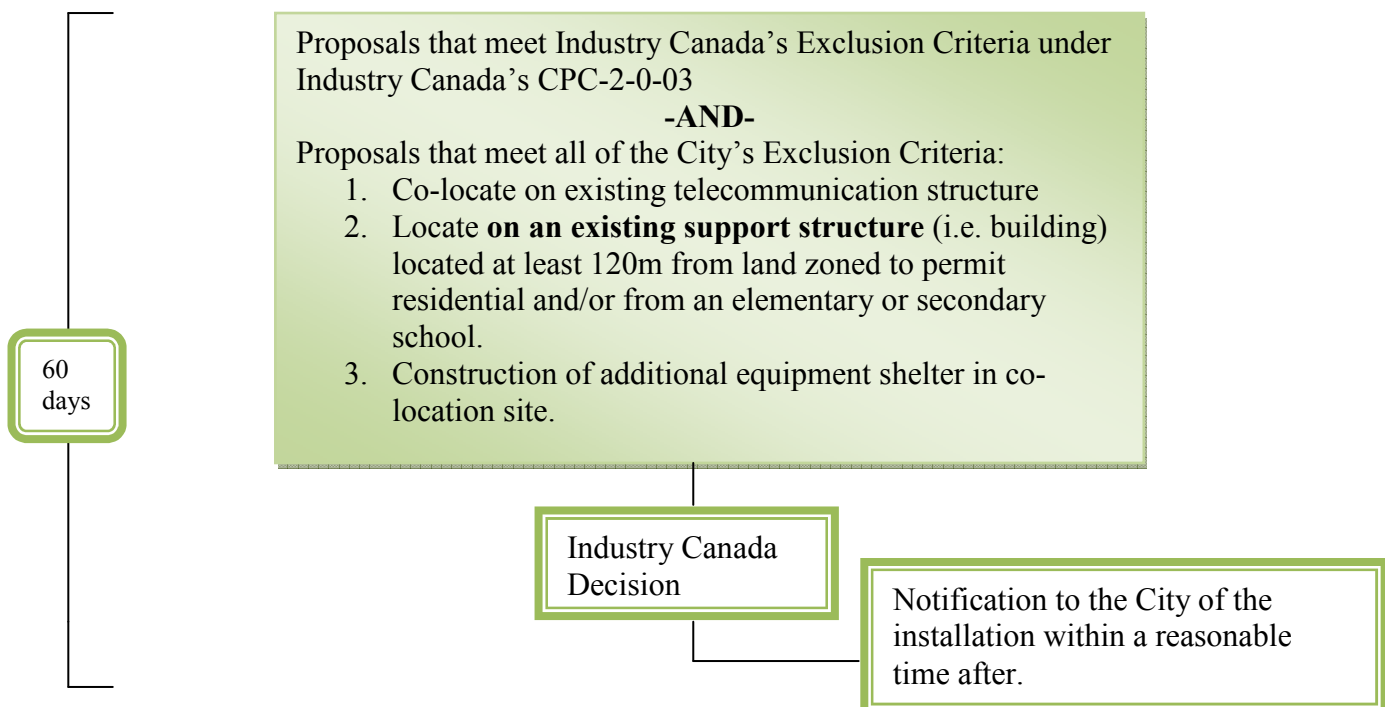
The Draft Procedure requires proponents to provide public notice, host a public information session for those proposals within 120m of lands zoned to permit residential use or from lands upon which an elementary or secondary school is located, submit a record of all attendees, provide copies of all letters or other communication received, and provide a follow up letter of response outlining how the concerns and issues raised during the process will be addressed. A Site Selection and Justification Report is also required to be submitted by the proponent (prepared by a professional engineer or land use planner), which will include the rationale for the selection of the preferred option, including a description of why co-location options have not been arranged as directed by Industry Canada's circulars.

The information collected through the Site Selection and Justification Report includes similar information as is required in a Class EA. Attempting to require proponents to provide even more information would likely not be accepted by Industry Canada. In addition, Industry Canada requires land use authorities to set out a local consultation process that will extend up to a maximum of 120 days. This timeframe will not accommodate an EA process.

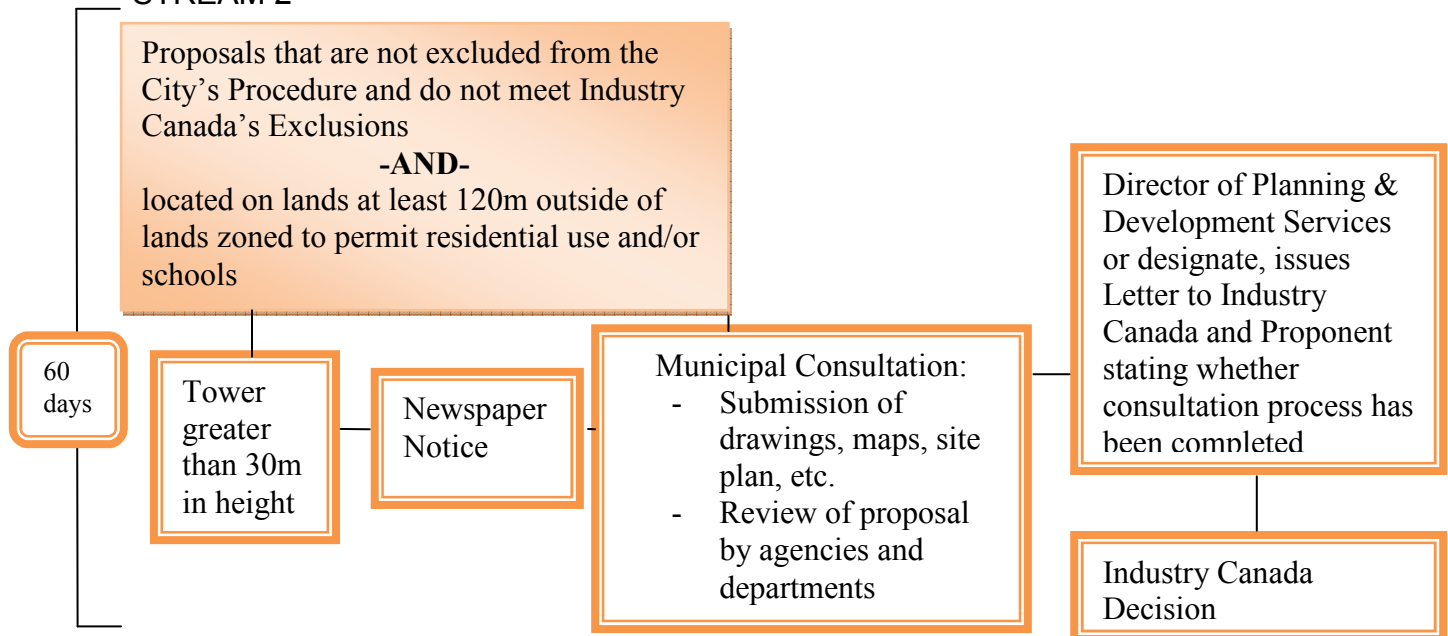
PROCEDURE HIGHLIGHTS

The Process At a Glance:

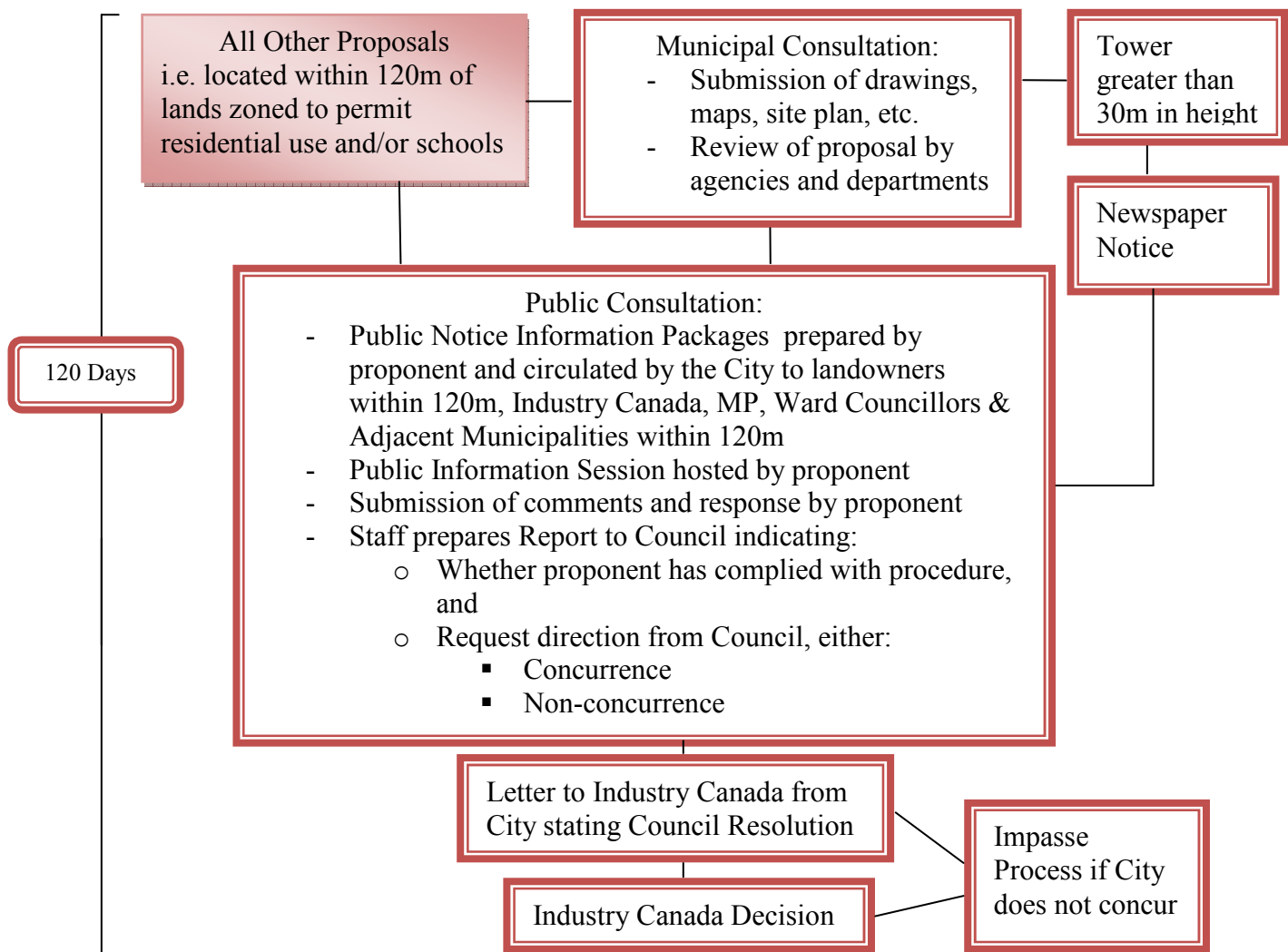
STREAM 1



STREAM 2



STREAM 3



The draft procedure outlines principles for site selection as follows:

“a) Principles for Site Selection

In determining an appropriate site for a telecommunication structure, the proponent shall adhere to the following principles:

- (1) Sites should be selected to minimize the total number of telecommunication structures required. Locations on existing structures or buildings or co-locations on existing telecommunication structures are strongly encouraged. Opportunities to incorporate a telecommunication structure into the design of a new building or structure should be explored by the proponent. The construction of a new telecommunication structure is discouraged, and should only be considered by the proponent when all other options to accommodate the telecommunication structure are not viable.*
- (2) Regardless of the zoning of the proposed site, new telecommunication structures are strongly discouraged within 120 metres of any land zoned to permit residential use or on lands where an elementary or secondary school is located, unless required for reasons of engineering or network objectives. If a new telecommunication structure is to be located within 120 metres of land zoned to permit residential use or a school, a detailed rationale for the necessity of this location must be provided in the Site Selection and Justification Report.*
- (3) Additionally, where the City owns lands within the proponent’s search area that is suitable for the proposed telecommunication structure and meets the proponent’s technical requirements, the City prefers to be the landlord of first choice, and the City agrees that any such sites will be according to the usual commercial terms, and will not be unduly delayed.*

b.) Considerations for Site Selection

When selecting a site for a new telecommunication structure, subject to engineering and network objectives, proponents are required to consider:

- Minimizing the overall number of sites required within the City;*
- Utilizing existing support structures located on lands not zoned to permit residential use and on lands at least 120 metres outside of lands zoned to permit residential use;*
- Appropriate landscaping and screening;*
- Maximizing distance from lands zoned to permit a residential use or on lands where an elementary or secondary school is located;*
- Maximizing distance from environmentally sensitive land use areas;*
- Maximizing distance from listed heritage buildings and sites;*
- Avoiding sites that would obscure public views and vistas of important natural or cultural significance;*
- Avoiding natural hazards;*

- *Ensuring compatibility with adjacent uses; and*
- *Access for maintenance purposes.”*

The above criteria outlines a list of preferences, however, the City is unable to impose its preferences as mandatory requirements because Industry Canada is the approval authority for telecommunication structures.

The inclusion of Principle #3, indicating the City's preference to be a landlord of first choice, contains the following dilemmas for Council:

- a) The objectivity of the City could be challenged by the public and other potential landlords, considering such a lease will generate revenue.
- b) Leasing of City property may make every City site a full public process unless Council authorizes all leases to be handled administratively.

Notwithstanding these dilemmas, the availability and suitability of public land to meet the site selection principles is unknown. It is anticipated that most City owned property is situated within 120m of residential lands and would therefore, not satisfy the site selection principles.

Industry Canada Exclusions:

For the following types of installations, proponents are excluded from the requirement to consult with the City and the public, but must still fulfill the General Requirements outlined in Section 7 of Industry Canada's Circular:

- maintenance of existing radio apparatus including the antenna system, transmission line, mast, tower or other antenna-supporting structure;
- addition or modification of an antenna system (including improving the structural integrity of its integral mast to facilitate sharing), the transmission line, antenna-supporting structure or other radio apparatus to existing infrastructure, a building, water tower, etc. provided the addition or modification does not result in an overall height increase above the existing structure of 25% of the original structure's height;
- maintenance of an antenna system's painting or lighting in order to comply with Transport Canada's requirements;
- installation, for a limited duration (typically not more than 3 months), of an antenna system that is used for a special event, or one that is used to support local, provincial, territorial or national emergency operations during the emergency, and is removed within 3 months after the emergency or special event; and
- new antenna systems, including masts, towers or other antenna-supporting structure, with a height of less than 15 metres above ground level.

Industry Canada sets out a Default Public Consultation Process to be followed in the instance where a municipality (LUA) does not have an established and documented public consultation process. The proposed City procedure requires public consultation for those proposals that would otherwise meet the Industry Canada requirements for public consultation, except where the City procedure encourages location of towers in non-residential areas. Likewise, the proposed procedure largely reflects Industry Canada's protocol and timeline requirements. The City's procedure is limited to a framework for consultation and a process whereby the City will respond to Industry Canada in relation to the procedure.

The draft procedure would require that some of the exclusions listed above (ie. New installation on a support structure), would require municipal consultation, but Industry Canada may not accept that and therefore, not require a proponent to follow the local protocol.

Applications Exempt from Public Consultation under Draft Procedure:

The proposed procedure anticipates that those proposals that are exempt from public consultation, would only be circulated to agencies and departments; a process similar to a site plan application. In instances where a proposed tower is greater than 30m in height, regardless of its location, a newspaper notice will be required. The newspaper notice must include a description of the proposed installation; its location and street address; proponent contact information and mailing address; and invitation to provide public comments to the proponent within 30 days of the notice. The City response, in this instance, would come from Planning Staff to the proponent and to Industry Canada, detailing any comments regarding the proposal and requesting the proponent to address any concerns. Subsequent to this correspondence, Planning Staff will provide a further letter to the proponent and to Industry Canada confirming whether or not the proponent has completed the City's consultation process in accordance with its procedures.

Applications requiring Public Consultation under Draft Procedure:

In the instance where a proposal is subject to public consultation, the proposal is circulated to owners of land within a radius of 120m or three times the tower height (measured from the property line), whichever is greater, in addition to agencies and departments. A Public Information Session is also required. Newspaper notice is also required for towers with a proposed height greater than 30m. Planning Staff will submit a report to Council indicating whether the proponent has complied with the City's procedure. The City will forward comments raised during the public consultation process to Industry Canada, by way of a letter stating whether the consultation process has been completed in accordance with the City's Policy and Procedure. Staff will seek direction from Council regarding its position on a specific proposal. Industry Canada requires a letter of concurrence or non-concurrence from the City.

Response to Industry Canada:

In both instances, the City will forward comments raised during the public consultation process to Industry Canada. As the approval authority, Industry Canada is required to ensure that the proponent has concluded the consultation process with the City, including any required public consultation as set out in the procedure, and further ensures that the proponent addresses all reasonable and relevant concerns prior to commencing installation/modification of an antenna system.

The following concerns have been identified in Industry Canada's Circular CPC-2-0-03 as 'Concerns that are not relevant':

- *"disputes with members of the public relating to the proponent's service, but unrelated to antenna installations;*
- *potential effects that a proposed antenna system will have on property values or municipal taxes;*
- *questions whether the Radiocommunication Act, Client Procedures Circular CPC-2-0-03, Health Canada's Safety Code 6, locally established by-laws, other legislation, procedures or processes are valid or should be reformed in some manner."*

SUMMARY

The draft procedure has been prepared as a result of consultation with Industry Canada, to provide a protocol for municipal consultation. Industry Canada regards the City of Peterborough as a local 'Land Use Authority' (LUA).

While Industry Canada recommends that each Land Use Authority develop a local protocol, Industry Canada has also indicated to the City that it may exempt a proponent from requirements contained in a local protocol that are more stringent than Industry Canada's default protocol.

Industry Canada, through the Minister of Industry, has the authority to approve tower installations under the Radiocommunication Act, including the location, erection of all masts, towers and other antenna-supporting structures. Industry Canada requires that consultation with the City be completed within 120 days from the proponent's initial

formal contact with the City. Industry Canada may support additional time, dependent on the individual circumstances.

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Attachments:

Exhibit A – Draft Telecommunication Structures Policy
Exhibit B – Draft Telecommunication Structures Procedure
Exhibit C – Report PLPD11-016, dated February 19, 2008 – Information Report on
Telecommunication Installations
Exhibit D – Information Links provided by Health Canada