

Staff Report 2020-0007

Meeting Date: February 11, 2020

Subject: Request for Proposal (RFP) to Conduct a Ward Boundary Review

Submitted By: Amanda Fusco, Manager, Legislative Services / Acting Town Clerk,
Corporate Services

Chad Curtis, Specialist, Legislative, Corporate Services

RECOMMENDATION

That Town staff be directed to commence a Request for Proposal (RFP) process to procure the services of a consultant to undertake a Ward Boundary Review; and

That a new 2020 capital project be established in the amount of \$60,000 for the Ward Boundary Review, to be funded from Operating Budget Contingency Reserve.

REPORT HIGHLIGHTS

- A review of a municipalities electoral system should take place every twelve years, or three election terms.
- A Ward Boundary Review will ensure effective representation as mandated by the Supreme Court decision in the Carter case.
- Staff are recommending that a consultant be retained through an RFP process to complete the review.
- Staff are recommending that a new capital project be created in the amount of \$60,000 for a Ward Boundary Review to be funded from the Operating Contingency Reserve Fund.

DISCUSSION

The purpose of this report is to seek approval for a ward boundary review and to issue a Request for Proposal (RFP) for a consultant to complete a ward boundary review in the Town of Caledon. A ward boundary review would consider various ward system configurations for the Town, as well as involve significant public consultation. In addition, it provides an opportunity for Council to address the composition of the local council. In a ward boundary review, the process is conducted factoring population numbers relating to Census and growth planning information not the number of electors. Data regarding number of electors, relevant to municipal elections, is provided by the Municipal Property Assessment Corporation. So, when conducting a ward boundary review, the focus is typically at a higher, more holistic, growth planning level, rather than strictly related to election planning purposes.

Background

The Town of Caledon has seen significant development and population growth in the past two decades. Caledon's current ward boundaries were established in 1994 by an appeal to the Ontario Municipal Board. According to Census data, the population of Caledon in 1994 was 39,150. By the 2011 Census the population had grown to 59,460 and to 66,502 by 2016. This represents a population increase of 58.9% from 1994 to 2016. The Town's Official Plan growth forecasts estimate the Town's population will increase to 87,000 or by another 30.8% before the next Municipal Election, 108,000 by 2031 and 169,000 by 2041.

Given the length of time that has lapsed since the last review and the fact that population growth in certain wards has grown, staff believe that undertaking a ward boundary review at this time is appropriate.

Principles of Ward Boundary Reviews

A review of ward boundaries is intended to achieve "effective representation" as established by the Supreme Court of Canada in the Carter Decision (1991). The historic Carter Case, established that there are two interrelated principles that must be considered when carrying out ward boundary reviews: 'effective representation' and 'voter parity.'

'Voter parity' (often also referred to as representation-by-population) is the principle that all votes should have equal weight and therefore the number of people living in each ward should be similar. The primary test for effective representation is voter parity, but it must consider a variety of other factors such as geography, community history, community interests and representation of minorities.

The *Municipal Act, 2001* does not provide any criteria to guide the Town's electoral system review process. However, the Carter decision and decisions issued by the Ontario Municipal Board (now Local Planning Appeal Tribunal) have established a set of guiding principles that have become the unwritten standard of boundary reviews in Ontario. These include:

- *Effective Representation:* when defining effective representation as the right protected by the Charter, the Court noted that the relative parity of voting power was a prime, but not an exclusive, condition of effective representation. Deviations can be justified where the consideration of other factors, such as geography, community history, community interests and minority representation would result in a legislative body that was more representative of Canada's diversity. According to the Court, considering all these factors provides effective representation.

- *Representation by Population:* voters should be equally represented, and wards should have reasonably equal population totals. Voter parity should be the goal of ward boundary reviews.
- *Communities of Interest:* the Carter decision recognizes that the protection of communities of interest may justifiably override the principle of voter parity where the inclusion of a community of interest will lead to a system that is more representative of the Town's diversity. The Court did not define what constitutes a community of interest; however, it has been leveraged in Ontario Municipal Board appeals to recognize historical settlement patterns or existing communities and to represent social, historical, economic, religious, linguistic or political groups. As an example, each of Caledon's 21 distinct communities could be considered a community of interest.
- *Future Population Trends:* ward boundary reviews should consider future changes in ward population. Being mindful of anticipated population trends will ensure that a ward and its residents are neither advantaged, nor disadvantaged because of development activity throughout the town. Ward boundary reviews should take into consideration anticipated changes in population of a period of twelve years, or three elections.
- *Physical and Natural Boundaries:* ward boundaries will be drawn impartially and with consideration to using distinct physical and geographic features. Physical features should be leveraged as they create preexisting boundaries which naturally divide Town residents and may facilitate the effective representation of the ward's residents.

Population size variances of between plus or minus 25 to 33 percent are generally accepted as the maximum variance to achieve voter parity. That is to say, no ward should have population greater than 33% above or below the average for all wards. Using the 2016 Census information, defined by wards, variances are noted in Table 1.

Table 1. 2016 Census Populations by Ward

Ward*	Population	Variance
1	9,310	-44%
2	15,295	-8%
3 / 4	19,286	16%
5	22,611	36%
Total	66,502	

Source: 2016 Region of Peel Ward Profiles <http://www.peelregion.ca/planning-maps/wardprofiles/>

*Note: Ward values are derived from the total 2016 Census population for the Town and allocation by percentage using the logic derived by the Region of Peel.

In corollary, data was used from the 2018 Municipal Election regarding the number of electors by ward to determine voter parity variance. The results in Table 2 show a similar trend to that of Table 1 (populations by ward), that in the current ward boundaries there is disparity between the population/number of electors and representation.

Table 2. 2018 Municipal Election Electors by Ward

Ward	Count	Variance
1	7,856	-39%
2	12,000	-6%
3 / 4	14,452	13%
5	16,849	32%
Total	51,157	

Summarizing the two tables above, based on the current ward boundaries there appears to be disparity in the number of voters being represented, with over-representation in some wards and under-representation in others. In addition, Caledon's population growth since its boundaries were last reviewed has grown significantly and will continue to grow based on future forecasts. As a result, staff recommend that a ward boundary review be completed. A review will address the voter disparity along with that fact that the current ward boundaries have not been evaluated since 1994.

Legislative Authority

The *Municipal Act, 2001, as amended* ("the Act") provides the framework for municipalities to change its composition of council and conduct electoral ward boundary reviews. Subsection 222(1) states that a municipality is authorized to "divide or re-divide the municipality into wards or to dissolve the existing wards." Subsection 222(3) provides that a municipality is required to give public notice that a ward boundary by-law has been passed within 15 days after the by-law is passed. The notice must specify the last date for filing a notice of appeal.

Subsection 222(4) of the Act states that within 45 days of the ward boundary by-law being passed, it may be appealed to the LPAT by "the Minister or any other person or agency. The appeal is made by filing a notice of appeal with the municipality setting out the objections to the by-law and the reasons in support of the objections. The municipality is required to forward any notices of appeal to the LPAT within 15 days after the last day for filing the notice [Subsection 222(5)].

For any ward boundary changes to be in effect for the 2022 Municipal Election, any by-law establishing new ward boundaries must be in force before January 1, 2022. Specifically, if the by-law establishing new ward boundaries is appealed to the LPAT, the notices of appeal must be withdrawn, or the Tribunal must have issued an order to affirm or amend the by-law, before that date.

While the Act provides for municipalities to divide or re-divide the municipalities into wards or to dissolve the existing wards, the Act also provides for a mechanism under Subsection 223(1) of the Act, whereby electors in a municipality may present a petition to the council asking the council to pass a by-law dividing or re-dividing the municipality into wards or dissolving the existing wards. The petition requires the signatures of one per cent of the electors in the municipality or 500 of the electors in the municipality, whichever is less and if Council does not pass a by-law in accordance with the submitted petition within 90 days of receiving the petition, any of the electors who signed the petition may apply to the Local Planning Appeal Tribunal to have the municipality divided or re-divided into wards or to have the existing wards dissolved. The Tribunal is required to hear the application and may make an order dividing or re-dividing the municipality into wards or dissolving the existing wards. The significance of the section is that LPAT then becomes the decision maker for establishing ward boundaries with very little input from the municipality. This was the process that unfolded between 1993 and 1994 when the OMB combined wards 3 and 4 into one ward, known as ward 3 / 4 today.

Regional Governance

Section 218(6) of the Act requires that a regional municipality shall review following the regular election in 2018, and every second regular election thereafter, for each of its lower-tier municipalities, the number of members of its council that represent the lower-tier municipality. In February 2019, the Minister of Municipal Affairs and Housing provided a letter to Regional Municipality of Peel (“Region”) Chair requesting that the Region pause its council composition review, considering the governance review being carried out by the Ontario government. On January 9, 2020 the Minister again provided a letter to the Regional Chair to advise that the Region should resume its review of its council composition. The correspondence was referred to the Regional Policies and Procedures Committee and is scheduled to be considered on February 6, 2020.

Given the implications of changing council’s composition, this process is typically run concurrently with a ward boundary review to ensure that if the number of elected official changes at the Region, the impact to electoral representation is minimized.

At this point, few details have emerged as to what changes could be coming, if any. The scope of work for the proposed consultant will include that the outcome of any changes to council composition may require the ward boundary review to be further analyzed.

Engaging a Consultant

It is recommended that a consultant be engaged to lead the ward boundary review to ensure that there are no perceptions of staff conflicts in determining ward boundary recommendations to Council. Most mid-sized urban municipalities that have undertaken ward

boundary reviews recently, including Newmarket, Guelph, Hamilton and Milton have engaged consultants to lead the review.

If approved, the consultant would conduct research, develop and execute a work plan that includes broad public consultation. The consultant's findings and recommendations would be reported to Council. In addition, the consultant would be an expert witness, if necessary, in the event of one or more appeals to the LPAT of any new Council-approved by-law to revise ward boundaries, as described in this report.

If approved, the consultant's specific responsibilities will include:

- Undertaking a ward boundary review that will withstand legal scrutiny and possible appeals to the LPAT;
- Developing a ward boundary review work plan and community engagement strategy;
- Undertaking required electoral, public policy and other research to inform the ward boundary review process;
- Implementing a two-stage broad engagement and consultation strategy with residents, communities, key stakeholders and Members of Council to elicit input on current ward boundaries and input on ward boundary options; and
- Developing ward boundary options and a recommended option for Council's consideration by the end of 2020.

Projected Timeline

Staff are seeking approval to retain a consultant to meet statutory timelines to have any new ward boundaries in place for the 2022 Municipal Election. As stated previously, for any new ward boundaries to be in place for the 2022 Municipal Election, a by-law must be in effect by January 1, 2022, and any appeals to the LPAT must be concluded by this date.

If Council approves that an RFP be commenced to procure the services of a consultant to undertake a ward boundary review, next steps in the process include:

1. RFP evaluation and contract negotiation.
2. Public consultation on current ward boundaries (Round I).
3. Report to Council outlining potential ward boundary options.
4. Public consultation on ward boundary options (Round II).
5. Final report to Council with recommendations.
6. Council to consider enactment by-law.
7. Public notice of the enactment of the by-law.
8. The 45-day LPAT Appeal Period ends.
9. Last day for notice(s) of appeals to be received.
10. If received, notice(s) of appeal to be forwarded to LPAT by the Town.

11. If appealed, expected LPAT decision (within 6-10 months)

FINANCIAL IMPLICATIONS

Development of the 2020 budget occurred prior to the final announcement regarding the Regional Governance Review by the Province not being pursued. As such, staff did not include a placeholder for any necessary funds relating to the Ward Boundary review.

The cost of the Ward Boundary Review is estimated at \$60,000, based on experiences in other similar sized municipalities. Staff recommend that a new 2020 capital project be created in the amount of \$60,000 for a Ward Boundary Review to be funded from the Operating Contingency Reserve Fund. The current, uncommitted balance in the Operating Contingency Reserve fund is \$3,040,217. The revised uncommitted balance of the reserve would be \$2,980,217 inclusive of the Ward Boundary review capital project.

COUNCIL WORK PLAN

Good Governance

ATTACHMENTS

None.