



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 14, 2023
SUBJECT/REPORT NO:	Implementation of Changes to Section 41 of the <i>Planning Act</i> - Site Plan Approval, in Response to Provincial Bill 23, <i>More Homes Built Faster Act, 2022</i> (PED23043) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That the Draft By-law, attached as Appendix “A” to Report PED23043, which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council.

EXECUTIVE SUMMARY

On November 28, 2022, Bill 23, *More Homes Built Faster Act, 2022*, received Royal Assent, thereby becoming law. The Province’s stated purpose of the proposed legislative changes is to have 1.5 million homes built over the next 10 years by further streamlining approvals for housing and reducing barriers and costs to development so that communities can grow with a mix of housing types and tenures.

Bill 23 makes amendments to nine different statutes, including the *Planning Act*. A detailed summary of the changes precipitated by Bill 23, as well as the City of Hamilton response to the changes, was provided in Appendix “A” and “B” attached to Report PED22207.

With Bill 23 now in effect, staff are implementing the legislative changes. Report PED23043 addresses the changes to Section 41 of the *Planning Act* by amending the City’s Site Plan Control By-law.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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Site Plan Approval is a legislated process under the *Planning Act* required for many types development which implements a coordinated review process to address matters of site design including site layout, site access and parking, grading and drainage, landscaping, and building design. The entire City of Hamilton is designated as a site plan control area, with the Site Plan Control By-law regulating the type of development subject to Site Plan Approval and the requirements of the approval process.

As summarized in Appendix “A” attached to Report PED22207, Bill 23 has made significant changes to the Site Plan Control process. These include:

- Modifying the definition of “Development” to exclude residential development on a lot if the lot contains no more than ten residential units, thereby exempting all aspects of Site Plan Control for residential development of up to ten units on a lot;
- Excluding matters relating to exterior design from Site Plan Control, including character, scale, appearance and design features of buildings, as well as sustainable design; and,
- Including matters of the appearance of elements, facilities, and works on the land to the extent that the appearance impacts matters of health, safety, accessibility, sustainable design or the protection of adjoining lands. Bill 23 as passed, was amended after Second Reading to allow municipalities to implement “green” standards at site plan, provided said standards are not more restrictive than the Ontario Building Code.

The Draft By-law to amend the City of Hamilton Site Plan Control By-law No. 15-176, as Amended by By-law Nos. 18-104, 19-026, and 21-069, is appended as Appendix “A” attached to Report PED23043.

This change has resulted in the cancelation of forty in process Site Plan Control applications; ten for multi-unit developments and thirty for single detached dwellings. The majority of these proposals are located in the Ancaster Existing Residential “ER” Zone and the Hamilton Beach Strip.

As staff continue to respond to the Bill 23 changes, future reports to Council will address other policy and process changes and the financial impact and staffing implications of the legislation.

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Alternative processes and program requirements may need to be implemented to address matters no longer captured by Site Plan Control. The financial implications of these changes will be discussed as part of a future report(s) to Council.

Staffing: Staffing changes resulting from a reduction in the number of applications due to Bill 23 will be offset by the additional staffing required for the Bill 109 process changes. These will be managed through delegated authority as outlined in Report PED22112(c).

Legal: Legal Services and the Planning Division will report back where necessary with recommendations for the implementation of Bill 23.

HISTORICAL BACKGROUND

On October 25, 2022, Bill 23, *More Homes Built Faster Act, 2022*, was introduced at the Ontario Legislature, with amendments proposed to nine different statutes. The Provincial Government has introduced the legislative changes with the intent to streamline approvals for housing and reduce barriers and costs to development. The legislation includes amendments to the *Conservation Authorities Act*, *Development Charges Act*, *Municipal Act*, 2001, the *Ontario Heritage Act*, the *Ontario Land Tribunal Act, 2021*, and the *Planning Act*.

On November 30, 2022, Council adopted the City's staff submission to the Province on Bill 23, which was formally submitted to the Province on November 24, 2022 in order to meet the comment deadline. Report PED22207 summarized staff's position on the legislative changes, conveying that while City staff support the Province's efforts to find ways to increase housing supply and streamline development approvals processes so that all residents have better access to homes that meet their needs, significant concern was expressed that the Bill 23 changes will compromise the quality of communities. Bill 23 received Royal Assent on November 28, 2022 and is being proclaimed into law in phases as noted in the letter from the Minister to City Council dated December 22, 2022.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Provincial Planning Policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (PPS). It provides municipal governments with the direction and authority to guide development and land use planning through official plans, secondary plans and zoning by-laws. The *Planning Act*

requires that all municipal land use decisions affecting planning matters be consistent with policy statements and plans issued by the Province.

Urban and Rural Hamilton Official Plans

The Urban and Rural Hamilton Official Plans identify the entire area within the City of Hamilton Planning Area as a proposed Site Plan Control Area, with the Site Plan Control By-law establishing criteria for the application of Site Plan Control in accordance with the *Planning Act*. The Official Plans also identify the planning objectives that are to be achieved through Site Plan Control, and in the Urban Hamilton Official Plan, the components of a development that shall be considered to achieve the planning objectives identified.

While the Urban and Rural Hamilton Official Plans provide policy direction on Site Plan Control scope, objectives, and matters for review, Section 41 of the *Planning Act* gives effect to the Site Plan Control By-law. While there are a number of amendments to be made to the Urban and Hamilton Official Plans as a result of the changes to Section 41 of the *Planning Act*, these amendments are not required to implement changes to the Site Plan Control By-law. As such, a future amendment to the Urban and Rural Officials Plans will be brought forward to comprehensively address Bill 23 changes, including changes to the Site Plan Control policies.

RELEVANT CONSULTATION

Staff from the Legal Services Division were consulted in the drafting of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Bill 23 has amended Section 41 of the *Planning Act* which legislates Site Plan Control. Changes have been made to Section 41 that directly impact the implementation of Site Plan Control. The definition of development has been modified which regulates the type of development subject to Site Plan Approval. Through Bill 23, residential development of up to ten units on a lot is now exempt from Site Plan Approval. Section 41 has also been modified to remove the following requirement as part of the submission of plans or drawings for approval:

“41(4) 2.(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design...”

A further change has added the following regarding appearance:

“41(4.1.1) The appearance of the elements, facilities and works on the land or any adjoining highway under a municipality’s jurisdiction is not subject to site plan control except to the extent that the appearance impacts matters of health, safety, accessibility, sustainable design or the protection of adjoining lands.”

Report PED22207 provided a detailed analysis of the implications of these changes. With Bill 23 now in effect, the City is required to amend the Site Plan Control By-law to implement these amendments.

Appendix “A” attached to Report PED23043 contains the Draft By-law to amend Site Plan Control By-law No. 15-176, as Amended by By-law Nos. 18-104, 19-026, and 21-069. The changes to the City of Hamilton Site Plan Control By-law can be summarized as follows:

Section 1.0: Definitions

Definitions for “Dwelling Unit” and “Lot” have been introduced to define new terms contained in new and amended regulations. These new terms are defined as per the existing definitions found in Zoning By-law No. 05-200 and accordingly, refer to that document.

Section 3.0: Submission Requirements for Plans and Drawings

Subsection 3.1.2 of the Site Plan Control By-law regulates the requirements of drawings that are to be submitted, showing plan, elevation and cross-section views for each building to be erected. As per the Bill 23 changes, Site Plan Control can no longer apply to matters relating to exterior building design and appearance unless impacting matters of health, safety, accessibility, sustainable design or the protection of adjoining lands. As such, Subsection 3.1.2.4 has been revised.

Section 8.0: Site Plan Control Exemptions

Section 8.0 identifies the types of development (building / use) that are exempt from Site Plan Control. With the modification of the definition of development to exclude residential development on a lot containing ten or less dwellings units, the following sections have been deleted as they are captured by the new exemption for residential development:

- “8.1 any single detached dwelling, duplex dwelling or semi-detached dwelling;
- 8.2 any building accessory to the uses described in paragraph 8.1 above”

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Section 8.1 and 8.2 have been replaced by a new Section 8.1 which captures the new exemption as follows:

“8.1 any residential development of a lot which contains no more than ten dwelling units, and any buildings accessory thereto.”

The following existing exemptions still apply and are renumbered:

“8.2 any street townhouse development within a registered plan of subdivision for which the subdivision agreement is in full force and effect.

8.3 any agricultural building or structure.”

Section 9.0: Types of development, built form or areas of the City where Site Plan Approval is required (Notwithstands Section 8.0)

The Site Plan Control By-law is structured so as to apply to the entire City (Section 2.0), with Section 8.0 identifying the types of development (building / use) that are exempt from Site Plan Control. Section 9.0 then identifies a series of uses or circumstances where the exemptions of Section 8.0 do not apply.

The application of Section 9.0 has been modified through this amendment by notwithstanding Section 8.2 and 8.3 only. What this means is the Site Plan Control exemption for residential development on a lot containing ten or less dwelling units and any buildings accessory thereto is an exemption for which there are no exceptions. Therefore, this form of development is not subject to any of the regulations of Section 9.0, as amended.

The requirements of the amended Section 9.0 (which notwithstands Section 8.2 and 8.3), are as follows:

Section 9.1 requires Site Plan Approval for buildings or structures situated Adjacent to or within a Core Area(s). As defined, Core Areas are “key natural heritage features, key hydrologic features, local natural areas and their vegetation protection zones as indicated on Schedule "B" - Natural Heritage System of the Rural Hamilton Official Plan and Schedule "B" - Natural Heritage System of the Urban Hamilton Official Plan”.

Whereas the current Section 9.1 presently captures any building or structure situated Adjacent or within a Core Area(s), the regulation has been modified to remove any residential development of ten dwelling units or less on a lot from the requirement to undertake Site Plan Control as it applies to Core Areas. As part of the Zoning By-law No. 05-200 reform work, the majority of the City of Hamilton, including Core Areas, are

now regulated by Zoning By-law No. 05-200. There is a general provision in the Zoning By-law that requires a minimum setback of 7.5 metres from the zoned limits of a Core Area and residential permissions have been removed from the zoning applied to Core Areas. Furthermore, the Conservation Authority permitting requirements will still apply.

Section 9.2 requires Site Plan Approval for single detached dwellings, duplex dwellings, and semi-detached dwellings, including accessory buildings and structures, for an area of the former City of Hamilton that forms part of a zero lot line development. Schedule “A” of the Site Plan Control By-law delineates these lands which are located northeast of the intersection of Mohawk Road East and Upper Wentworth Street.

As a result of Bill 23, single detached dwellings, duplex dwellings, and semi-detached dwellings constructed on the lands delineated on Schedule A” of the Site Plan Control By-law are no longer subject to Site Plan Control. If any other form of development occurs on these lands, it will be subject to the normal application of Site Plan Control. Therefore, this regulation and associated schedule are deleted in full.

Section 9.3 (i) requires Site Plan Approval for single detached dwellings, duplex dwellings, and semi-detached dwellings, including accessory buildings and structures, located to the east and west of Beach Boulevard, to address grading and drainage due to the unique conditions of the Beach Strip and the propensity for flooding to occur. Site Plan Control will no longer apply to the residential properties along Beach Boulevard that are located within the area identified on Schedules “B1” to “B3” of the Site Plan Control By-law. As such, this subsection and the accompanying schedules have been deleted from the Site Plan Control By-law. Any other form of development occurring on these lands will be subject to the normal application of the Site Plan Control By-law.

Section 9.3 (ii) requires Site Plan Approval for single detached dwellings, duplex dwellings, and semi-detached dwellings located on properties zoned the Existing Residential “ER” Zone in the Town of Ancaster Zoning By-law No. 87-57. Site Plan Control has been in place in the “ER” Zone of Ancaster since April of 2018 when it was implemented alongside amendments to the regulations of the “ER” Zone in the Ancaster Zoning By-law, to address matters related to grading and drainage, elevational changes of a property as it relates to grading, and tree preservation. In the “ER” Zone, Site Plan Control applies to new dwellings and substantial reconstructions or additions to existing dwellings, as well as accessory buildings and Detached Additional Dwelling Units (Secondary Dwelling Units) if they exceed 40 square metres in ground floor area. With the Bill 23 changes, Site Plan Control for these dwelling types can no longer be required. As such, Section 9.3 (ii) and Schedules “C1” to “C13” have been deleted from the Site Plan Control By-law. Any other form of development occurring on these lands will be subject to the normal application of the Site Plan Control By-law.

Section 9.4 applies Site Plan Control to single detached, duplex, and semi-detached dwellings that form part of a linked housing or similar innovative house grouping of development. With this type of housing exempt from Site Plan Approval, the regulation has been deleted.

Section 9.12 applies Site Plan Control to any building or structure that requires the use of a septic tank and is located in Vulnerable Area 1 for Source Protection. The Rural Hamilton Official Plan contains policies for Source Protection Plans which provide policy direction to ensure activities and land uses do not pose significant threats to municipal drinking water sources. These Plans identify vulnerable areas where significant threats are possible. Vulnerable Area 1 is identified on Schedule “G” - Source Protection Vulnerable Areas, of the Rural Hamilton Official Plan. This requirement will remain and as with the other regulations of Section 9.0, is applied to the Site Plan Control exemptions of Section 8.2 and 8.3. With the deletions previously discussed, Subsection 9.12 is to be renumbered to Subsection 9.2.

The remaining requirements of Section 9.0 apply Site Plan Control to a series of mainly agricultural and agricultural-related uses. These requirements remain in place and are unchanged.

Bill 23 and Process Changes

To address the deficiencies resulting from the changes to the Site Plan Control process, City staff within Building, Growth Management, and Planning Divisions are actively evaluating alternative process and program requirements that could be implemented to respond to the gaps created by the Bill 23 changes. This includes but is not limited to:

- Site grading;
- Landscaping;
- Servicing connections;
- Right-of-Way works and land dedication; and,
- Access permits.

In addition to these measures, staff continue to assess the changes to Site Plan Control that have removed exterior design and sustainable design from the approval process, and options that may be available for the City to have influence on the important matters of quality built form, public spaces, and innovative and sustainable design solutions. Furthermore, matters such as street tree plantings, road widenings, and warning clauses that have historically been addressed up front at the site plan stage will now be addressed at the back end of the process where there is either a consent or condominium application.

ALTERNATIVES FOR CONSIDERATION

Council is required to prepare the necessary amendments to the Site Plan Control By-law to bring it into conformity with the amendments to Section 41 of the *Planning Act*.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED23043 - Draft By-law to Amend Site Plan Control By-law No. 15-176, as Amended by By-law Nos. 18-104, 19-026, and 21-069.

AF:sd