



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 14, 2023
SUBJECT/REPORT NO:	Provincial Announcement Impacting Provincial Decisions on Municipal Official Plans and Official Plan Amendments (PED23252) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

RECOMMENDATION

- (a) That Council reconfirm its position on Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34, as adopted by Council on June 8, 2022;
- (b) That Planning and Economic Development Department staff on behalf of the Mayor and Council, be directed to:
 - (i) Submit Report PED23252, including the comments and changes in Appendices “A” and “B” and the development application information in Appendix “C” attached to Report PED23252 to the Ministry of Municipal Affairs and Housing;
 - (ii) Work with the Ministry of Municipal Affairs and Housing to retain modifications that are conformity-related and are supported by Council, as identified in the comments contained in Appendices “A” and “B” attached to Report PED23252;

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 2 of 23**

- (iii) Request that the Ministry of Municipal Affairs and Housing include clear language in the implementing legislation that would bar legal proceedings and remedies being brought against municipalities in relation to the reversal of the modifications by the Minister of Official Plans and Official Plan amendments;
 - (iv) Request that the Ministry of Municipal Affairs and Housing provide clear legislative language with respect to transitional matters in the anticipated legislation to reverse the modifications by the Minister of Official Plans and Official Plan amendments and adopt the recommendations of the City;
 - (v) Request that the Ministry of Municipal Affairs and Housing remove the requirement to phase in Development Charge Rates (Section 5(8) of the *Development Charges Act, 1997*, as amended) for the initial service specific Development Charge By-laws which utilize infrastructure master plans developed based on the reversal of Provincial modifications to the urban boundary;
- (c) That Planning and Economic Development Department staff and Finance staff be directed to:
- (i) Prepare detailed cost estimates of additional costs incurred by the City as a result of the Provincial modifications to Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34 made on November 4, 2022, and any additional costs incurred since the Provincial announcement on October 23, 2023;
 - (ii) Engage in discussions with the Province to recover costs incurred;
- (d) That the Effective Date and Transition Policies outlined in Report PED23252 be submitted as comments to the Province for inclusion in its anticipated legislation respecting the Provincial announcement.

EXECUTIVE SUMMARY

On October 23, 2023, the Ministry of Municipal Affairs and Housing announced its intention to reverse recent official plan decisions for various municipalities, including its decision made on Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34. On November 2, 2023, the Minister of Municipal Affairs and Housing issued a letter (attached as Appendix “D” to Report PED23252) that outlined the Province’s intention to introduce legislation as soon as possible that would reverse the Province’s changes to these official plans except for any modifications that

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 3 of 23**

are necessary to protect matters of public health and safety, in circumstances where construction has begun, or which are required to align with legislation or regulations. In essence, the Province would be removing all modifications it made to the City adopted Official Plan Amendments 167 and 34 as the approval authority and reverting back to the Council adopted official plans.

The announcement and the letter submitted on November 2, 2023 included a request for municipalities to submit changes and updates about the modifications to Ministry staff within 45 days, including information on projects already underway. The purpose of this report is to confirm the City of Hamilton's requested changes and updates for Official Plan Amendments 167 and 34 and provide information on projects that are underway related to the changes, within the 45 day time frame requested by the Minister, which from the date of the announcement results in a December 7, 2023 deadline.

Key modifications and the implications of the reversal are discussed in the Analysis and Rationale section of Report PED23252. Major areas of modification include the urban boundary, intensification and greenfield density targets, employment area conversions, community node policies, neighbourhood plan policies, and height limitations. To implement Council's previous decision on Official Plan Amendments 167 and 34, staff have no objections to the reversal of these modifications. Minor modifications such as corrections and added definitions that provide clarification or contribute to interpretive conformity with Provincial policies are identified as changes that can be carried forward by the Province.

The reversal allows the City to plan for opportunities to systematically increase density within the urban area and align this density with key areas of the City's urban structure and with major planned transit infrastructure, as requested by the Province. Growth will be monitored and adjustments to the growth strategy can be made by future amendment to the Official Plan as required.

As part of reversal, there are matters which will need to be determined by the Province regarding the effective date of the forthcoming legislation as well as transitional matters. Staff's recommended approach is that the Province implement an effective date of November 4, 2022 for the reversal, which is the date of the Province's prior decision on Official Plan Amendments 167 and 34. Details about transitional matters would be based on this effective date. Recommendation (d) to Report PED23252 directs that the recommended effective date and approach to transitional matters as outlined in the Report be submitted as comments to the Province.

The announcement also indicated that in recognition of the costs incurred by municipalities arising out of the decisions, the Province will work with impacted

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 4 of 23**

municipalities to assist with related planning and staffing costs. Recommendation (c) to Report PED23252 directs staff to prepare detail cost estimates for costs incurred, and to engage in future discussions with the Province to recover costs. Costs estimates are not subject to the 45 day time limit and will be developed at a later date. Key costs relate to reviewing the implications of the decision, subsequent urban expansion areas planning work, additional analysis to establish new greenfield density and intensification targets and impacts to the Development Charges Study and Infrastructure Master Plan processes.

Alternatives for Consideration – See Page 23

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Various costs have been incurred as a result of the Provincial decision on Official Plan Amendments 167 and 34 issued in November 2022. Costs include both staff resources spent to review and implement the changes, and consultant costs for further analysis and assistance with subsequent public consultations related to the urban expansion areas.

The letter released by the Province on November 2, 2023 indicated that it was “interested in receiving information and supporting documentation that outlines related planning costs that may have been incurred by your municipality arising out of the provincial decisions”. To recover costs associated with the decision, Recommendation (c) to Report PED23252 directs staff to prepare detailed cost estimates and engage with the Province on further discussions to recoup costs.

Staffing: There are no staffing implications for this report.

If any urban boundary expansions are not reversed, then there will be staffing implications associated with completing Secondary Planning for expansion areas. Staffing resources needed would vary depending on the extent of an urban boundary expansion and the approach to Secondary Planning. Completing Secondary Plans for all expansion areas and overseeing the implementation of the Secondary Plans would require a dedicated staff team from multiple departments/divisions.

Legal: As announced on October 23, 2023, the Minister of Municipal Affairs and Housing is proposing to introduce legislation to reverse the Provincial modifications to Official Plans. Legal Services will continue to monitor any developments related to the introduction of this anticipated legislation and its potential impacts on development and planning matters at the City.

HISTORICAL BACKGROUND

A Municipal Comprehensive Review and update to the City's Growth Related Integrated Development Strategy were initiated concurrently in 2017. The Municipal Comprehensive Review work plan was divided into phases with the first phase focused on bringing the Urban and Rural Hamilton Official Plans into conformity with urban related policies of the Growth Plan for the Greater Golden Horseshoe (Growth Plan), and the Provincial Policy Statement.

The update to the City's Growth Related Integrated Development Strategy (GRIDS 2) was required to plan for Growth Plan population and employment forecasts to 2051 and to determine the impact on the City's Master Plans. The most recent 2051 forecasts for Hamilton from the Growth Plan for the Greater Golden Horseshoe project a total of 820,000 persons and total employment of 360,000 jobs for Hamilton by 2051. GRIDS 2 identifies where intensification / redevelopment will be planned to occur and forms the basis for the future official plan reviews in accordance with Provincial planning requirements.

The following is a chronology of reports, announcements and decisions that occurred since 2021 related to the City's long-term growth.

- November 2021: Report PED17010(n) presented the final Land Needs Assessment, addendum report, and peer review, recommending the "Ambitious Density" growth option, based on an intensification target of 60% with approximately 1,310 hectares of land that needed to be added to the Urban Boundary to accommodate community-related growth to 2051. The location of where this growth would occur was not included in the staff report.
- November 2021: Council adopted a No Urban Boundary Expansion growth option to accommodate the City's forecasted population and employment growth within the existing urban area to the year 2051. Council directed staff to prepare a draft Official Plan Amendment which implements the Council direction for No Urban Boundary Expansion.
- June 2022: The No Urban Boundary Expansion growth scenario, based on an intensification target of 80%, was integrated into the final Urban Hamilton Official Plan and Rural Hamilton Official Plan policy amendments that were ultimately adopted by Council on June 8, 2022 through Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34. The 80%

intensification rate reflected the proportion of growth to be accommodated within the built boundary. The remaining 20% of growth was to be accommodated within designated greenfield areas already within the urban boundary. Planning Division staff submitted the Council adopted Official Plan Amendments and additional required materials to the Ministry of Municipal Affairs and Housing for their final review and approval on June 27, 2022.

November 4, 2022: The Ministry of Municipal Affairs and Housing issued decisions to the City of Hamilton in response to the Council-adopted Official Plan Amendments 167 and 34 which represented the completion of Phase 1 of the City's Official Plan Review and the GRIDS 2 / Municipal Comprehensive Review processes. The Province approved the Official Plans with 77 modifications to the Urban Hamilton Official Plan and 25 modifications to the Rural Hamilton Official Plan. A significant modification was the addition of approximately 2,200 gross ha of urban expansion area to the City's urban boundary, as well as other significant changes as outlined in the Analysis and Rationale Section of Report PED23252.

November 4, 2022: The Province also posted the ERO posting for the removal of lands from the Greenbelt Plan area. Discussion of the Greenbelt removals is provided in Report PED23244.

November 29, 2022: Planning Division staff presented Report PED21067(c) to Planning Committee, outlining the details of the Provincial modifications to Official Plan Amendments 167 and 34 and are discussed further in the Analysis and Rationale Section.

As a result of the modification to add land to the Urban Boundary by the Province, Planning Division staff began receiving inquiries for meetings with landowner groups in the expansion area lands about moving forward with secondary planning and development.

February 14, 2023: Recommendations on the Municipal Housing Pledge were presented to Planning Committee through Report PED23056. The Housing Pledge requires a commitment from municipalities across the Province to do their part in meeting the Provincial goal of 1.5 million new homes by 2031. For Hamilton, a commitment to facilitate the construction of 47,000 new units by 2031 is requested by the Province, representing an 11,400 unit increase

to the 2031 allocations assigned through the Growth Plan. These units would be accommodated through intensification opportunities within the urban boundary, prior to the Provincial urban boundary expansion areas added through Official Plan Amendment 167 modifications. The Mayor signed the Housing Pledge on March 17, 2023.

March 2023: Report PED21067(d) sought direction on how to move forward with secondary planning work for the Urban Expansion Areas. Planning staff were directed to prepare a draft policy framework to guide City-led Secondary Planning and privately initiated Secondary Plan applications in the Urban Expansion Areas. In May 2023, the City undertook consultation with the public and stakeholders on the draft policy framework and development guidelines.

While planning staff were in the process of preparing Official Plan Amendment 185, there were several landowner groups who made Formal Consultation submissions for a privately initiated Secondary Planning policy amendment.

July 11, 2023: Report PED23144 presented the findings of the engagement activities undertaken and recommended the approval of an Official Plan Amendment to implement the Urban Expansion Areas secondary planning policy framework, as well as the Secondary Planning Guidelines for Urban Expansion Areas. Urban Hamilton Official Plan Amendment 185 was adopted without appeals and came into effect on August 16, 2023.

Since the approval of Official Plan Amendment 185 staff have been involved in reviewing a term of reference for one privately initiated Secondary Plan and discussions for one potential hybrid (joint private/city) Secondary Plan within the urban expansion area. A substantial amount of staff time was dedicated to meeting with landowner groups and review of materials.

September 21, 2023: The Ontario Premier announced that all lands removed from the Greenbelt Plan in December 2022 would be reinstated. On October 16, 2023, the Government of Ontario introduced Bill 136, *Greenbelt Statute Law Amendment Act, 2023* on its Environment Registry of Ontario website which if passed would return these lands to the Greenbelt Area.

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 8 of 23**

- October 23, 2023: The Minister of Municipal Affairs and Housing announced its intention to reverse Provincial changes to official plans and official plan amendments, except in circumstances where construction has begun or where doing so would contravene existing Provincial legislation and regulation.
- November 2, 2023: A letter from the Province, attached as Appendix “D” to Report PED23252 was received clarifying matters related to Provincial decisions on Municipal Official Plans and Official Plan Amendments.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Urban Hamilton Official Plan and Rural Hamilton Official Plan were approved by the Ontario Municipal Board and came into effect on March 7, 2012 and August 16, 2013, respectively, except for portions which remain subject to outstanding appeals including the southern portion of the urban boundary. Section 26 of the *Planning Act* requires that municipalities undertake a review of their Official Plan at least every 10 years and make the necessary amendments to ensure that local policies conform, or do not conflict, with current provincial plans, matters of provincial interest and the Provincial Policy Statement.

A Municipal Comprehensive Review is a requirement of the Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement, to ensure conformity with the applicable provincial plans and policies. The City’s Municipal Comprehensive Review was undertaken as the first phase on City of Hamilton’s Official Plan review and resulted in Official Plan Amendment 167 to the Urban Hamilton Official Plan, and Official Plan Amendment 34 to the Rural Hamilton Official Plan. As previously indicated, these Official Plan Amendments are subject to Provincial review and approval and were approved with Modifications on November 4, 2022.

RELEVANT CONSULTATION

A request for comments was circulated to internal staff following the Provincial announcement on the reversal of Official Plan changes. Circulation included staff within the Planning, Growth Management, Economic Development, Building, Transportation Planning and Climate Change Initiatives Divisions of the Planning and Economic Development Department, as well as staff within the Public Works Department, the Healthy and Safe Communities Department, Finance and Legal Services.

Since this is a Provincial initiative which requires a response within a limited timeframe, no additional consultation has taken place. Once formal legislation is introduced by the

Province, there would be an opportunity for the public to provide comments directly to the Province via the Environmental Registry of Ontario.

Previous City Consultation on Municipal Comprehensive Review

The City has undertaken extensive public and stakeholder engagement as part of the Municipal Comprehensive Review and Growth-Related Integrated Development Strategy workplan to allocate forecasted population and employment growth to 2051 which culminated in the adoption of Official Plan Amendments 167 and 34:

May – June 2018: Six public open houses were held to introduce the public to the Municipal Comprehensive Review and Growth-Related Integrated Development Strategy and provide information about existing development conditions and trends, an explanation about the City's Urban Structure to guide growth and present the concept of Major Transit Station Area planning. A complete summary of the engagement is provided in Report PED17010(c).

November - December 2019: Eight public open houses were held to inform and consult on the Directions to Guide Development, options for Residential Intensification and Designated Greenfield Area density targets, potential Employment Area conversions, and evaluation criteria for future growth areas. A complete summary of the engagement is provided in Report PED17010(g).

January – February 2021: Two virtual public information meetings were held to consult on the draft Land Needs Assessment and potential growth scenarios. Information and commenting opportunities were also available through the project web page and the Engage Hamilton platform. A complete summary of the engagement is provided in Report PED17010(i).

City Wide Survey on Growth Scenarios

In response to Council direction to staff in March 2021 following the presentation of the draft Land Needs Assessment Report PED17010(n) in June 2021, a City-wide mail survey was created which asked residents to choose their preferred option for how Hamilton should grow to the year 2051. In total, the City received 18,387 survey responses through both mail and email combined between June 22 and July 23, 2021

(survey end date). The No Urban Boundary Expansion option (Option 2) was selected by the majority of respondents (90.4% of all responses). The results from the City wide survey were submitted to Planning Committee on November 9, 2021 through Report PED17010(m).

Indigenous Engagement

Through the City's Growth Related Integrated Development Strategy and Municipal Comprehensive Review work, staff had circulated the proposed Cultural Heritage Topic Area updates to 11 Indigenous community contacts, including the Mississaugas of the Credit First Nation, Six Nations Haudenosaunee Confederacy Chiefs Council, Haudenosaunee Development Institute, Six Nations of the Grand River Territory, Huron-Wendat, and Metis Nation of Ontario. The circulation was expanded to an additional 15 Indigenous communities based on advice from the Province. In addition, local Hamilton organizations serving the Indigenous community were also circulated. The feedback received from the Indigenous community was submitted to Planning Committee on May 17, 2022 through Report PED21067(b)).

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Review of Modifications

When the Provincial approval of Official Plan Amendments 167 and 34 occurred in November 2022, it included 77 modifications to the Urban Hamilton Official Plan and 25 modifications to the Rural Hamilton Official Plan. The Province has indicated that a full reversal of all the modifications is intended, unless municipalities identify changes they would like to see made to the official plan, based on the modifications that the Province had previously made. Information about changes and updates, including information on projects that are already underway, was requested within 45 days of the provincial announcement, by December 7, 2023.

In response to this request, staff have completed a review of all modifications that occurred in 2022 in the tables attached as Appendices "A" and "B" to Report PED23252 and have identified changes that do not conflict with Council's directions for the MCR and growth strategy (GRIDS). The tables also provide further details and comments on implications of the modifications. A total of 26 modifications are identified as modifications that should be maintained. Many of these changes are minor administrative items and include corrections and added definitions that provide clarification and are required for interpretive conformity with provincial policies. Some of the changes facilitate residential intensification and clarify language around residential intensification which is consistent with Council's position.

Staff note that these amendments are based on conformity with existing Provincial policies. However, a draft Provincial Planning Statement was released by the Province in April 2023 which, if approved, would replace the Growth Plan and the Provincial Policy Statement, and could alter applicable provincial policy. The timing for a Provincial decision on a new Provincial Planning Statement is not known at this time. If new changes are pending, the Ministry should ensure that any modifications being carried forward will also conform to and align with the policies of this new document so as not to require the initiation of further City Official Plan Amendments to achieve conformity.

Major areas of policy changes and key implications of a reversal to the Provincial modifications for Official Plan Amendments 167 and 34 are discussed below. To implement Council's direction, staff have no objections with the reversal of these major areas of changes.

Urban Expansion Areas

The Provincial modifications to the City's Urban Boundary added 2,202 gross hectares of land as "Urban Expansion Area – Neighbourhoods" and "Urban Expansion Area – Employment Areas". These areas include lands along Twenty Road West, Twenty Road East, the Elfrida area and the White Church Road lands. Policy was added through the modifications to direct that secondary planning for these areas was needed before development could occur. The Council adopted built-up area intensification target (80%) and designated greenfield area density targets (60 people and jobs per hectare) were removed and replaced with policy to require staff to submit a revised amendment in the future that considered the implications of the new urban expansion area lands. Reference to a "firm urban boundary" was removed from policies in the Urban Hamilton Official Plan, and the Council adopted amendment to not permit expansions to the urban boundary of 40 hectares or less in advance of a Municipal Comprehensive Review was modified so that these applications could be permitted.

Key implications: The reversal of the Province's decision results in the City's growth strategy going back to the no urban boundary expansion scenario endorsed by Council. This is a growth strategy that relies on an aggressive intensification target of 80% within the built boundary (built up area), and 20% of growth occurring within designated greenfield areas already within the urban boundary. It will require the City to use a wide variety of tools to achieve intensification targets and deliver 47,000 housing units by 2031, as outlined in the City's Housing Pledge. Achieving the housing pledge is not a land supply issue but mostly a housing unit production issue. The City has already taken a number of actions to support intensification, however housing unit production will still need to increase substantially to remain on track to meet targets.

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 12 of 23**

Key strategies and actions to increase intensification that are already planned or underway include:

1. Completing additional phases of the Municipal Comprehensive Review including the Local Official Plan review and updating policies within the Urban Hamilton Official Plan to identify additional areas to support intensification through increased height and built form permissions, in accordance with policies already approved through Phase 1 of the Municipal Comprehensive Review;
2. Delineating Major Transit Station Area boundaries and planning for densities to support the B-Line LRT;
3. Updating Secondary Plans and associated zoning to allow for more intensification in appropriate locations;
4. Amending low density zoning city-wide to remove exclusionary zoning and allow a wider range of low density uses in addition to single detached dwellings, such as semi-detached units, triplexes, fourplexes and street townhouses;
5. Applying flexible mixed use zoning to areas with commercial uses so that commercial properties can redevelop with residential units;
6. Implementing inclusionary zoning requirements to facilitate the delivery of affordable housing, and considering the incorporation of larger unit requirements within an inclusionary zoning framework, to ensure the delivery of larger residential units to meet demand;
7. Taking various actions to streamline and expedite development approvals by increasing development planning staff levels, improving intake processes, creating guidelines and terms of references for application materials, and amending review and report timeframes to meet Bill 109 timelines for applications;
8. Continuing to review the City's portfolio of city-owned lands to identify opportunities for building a variety of housing types or for sale with proceeds to support affordable housing development;
9. Continuing to plan for and build the necessary infrastructure to support intensification;
10. Continuing with the implementation of the Housing Sustainability and Investment Roadmap to deliver on affordable housing goals;
11. Continuing the work that the Municipal Land Development Office is doing to collaborate and work with community partners to leverage municipally-owned lands or surplus lands for the development of housing;
12. Continuing to work collaboratively with the development industry to bring housing to Hamilton; and,
13. Continuing to engage and work with Federal and Provincial partners towards the shared goal of building housing and creating housing opportunities through funding programs and other housing initiatives or pilot projects. The City participated in the Province's Streamlining Development Approvals Fund to

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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.

advance policy and process improvements and is also participating in the Housing Accelerator Fund and the Building Faster Fund to advance additional actions designed to increase housing starts.

Other strategies which may need to be pursued that have been identified include:

1. Providing financial and other incentives to homeowners to increase the supply of secondary dwelling units and multi-plex conversions across the City;
2. Providing outreach and public consultation on the implications of the no urban boundary expansion option, including the scale and amount of new development required and the high level of change that will need to occur within existing communities;
3. Developing a “How-to” guide to gentle densification to assist home owners and applicants in understanding the process and looking at the potential for partnerships between small scale developers and homeowners to share risks and financial benefits;
4. Considering requiring minimum proportions of two and three bedroom units in new large residential buildings, to meet the demand for larger units; and,
5. Identifying opportunities to purchase land to meet the need for parkland and exploring the implications of maintaining standards for associated recreational facilities and amenities under the no urban boundary expansion option.

All of the above strategies allow the City to plan for opportunities to systematically increase density and align this density with existing and planned transit within the municipality.

To ensure housing targets are met, the City will need to monitor and report on progress. The need to monitor progress recognizes that the Official Plan is a fluid document that changes over time. If targets are not being met Council could consider adjustments to the growth strategy reflected in the Official Plan by amendment at a future date if it is needed.

A Council motion approved on November 19, 2021 directed staff to “report to the Planning Committee annually on residential development activity including, but not limited to, the City’s residential intensification rate; construction activity in terms of housing mix; the City’s supply of vacant land to accommodate forecasted growth; and, a comparison of actual versus forecasted growth, as per the land needs assessment, to allow for adjustment, as needed, due to any negative or positive impacts of the adopted City of Hamilton urban boundary and growth strategy”. Staff are preparing the reporting framework for annual monitoring and will be providing the first annual report to Planning Committee in the second quarter of 2024.

Private Urban Boundary Expansion Requests

The Council adopted Official Plan Amendment 167 included policy language prohibiting urban boundary expansions outside of a Municipal Comprehensive Review process. A Provincial decision to reverse this modification as recommended by Report PED23252 would reinstate this policy language. However, the Growth Plan still permits applications for urban boundary expansions under 40 hectares outside of a Municipal Comprehensive Review, where a specific set of policies in the Growth Plan are met. Based on the current Growth Plan policies, applications for urban boundary expansions under 40 hectares might still be submitted to the City, even with the reversal of the Province's decision.

Employment Land Conversions

In addition to the 59 hectares of Employment Area land approved by Council for conversion to non-employment uses through Official Plan Amendment 167, the Provincial modifications included two additional conversion sites: 1400 South Service Road, Stoney Creek (7 hectares) to the "Mixed Use-High Density" designation, and 128 Tope Crescent, Hamilton (0.1 hectare) to the "Neighbourhoods" designation on Schedule E-1 – Urban Land Use Designations and "Low Density Residential 3" within the Ainslie Wood Westdale Secondary Plan.

Key implications: With respect to 1400 South Service Road, Stoney Creek, these lands were evaluated by staff through the Employment Land Review process and were ultimately recommended for deferral through Report PED17010(r) to allow for a land use study to be completed for the area. The land use study was required to determine the risks to other employment lands in the area resulting from a conversion of the 1400 South Service Road lands. The change in designation to "Mixed Use-High Density" through the Provincial modifications posed the risk of having unknown impacts on the surrounding employment lands, and the locating of a high number of residential units in an area that was not identified in the Official Plan Urban Structure as being a strategic growth area. A Provincial decision to reverse this modification as recommended by Report PED23252 would remove this risk and ensure the City has sufficient employment lands for the long term under a no expansion growth scenario. The property located at 128 Tope Crescent was not evaluated for conversion through the Employment Land Review process. The Provincial modification changed the designation of the lands to a residential designation which does not exist within the Ainslie Wood Westdale Secondary Plan and has no associated policies. This would have required correction through a future Official Plan Amendment. As the lands were not previously evaluated through the Employment Land Review process, staff support the reversal of this modification. The reversal also eliminates the need for a future amendment to correct the Secondary Plan land use designation and also ensures the

City has sufficient employment lands for the long term under a no expansion growth scenario.

Although the Employment Land Review indicated that there was a sufficient supply of employment land for the long term, there is no excess of employment lands and therefore any future conversions within the context of a No Urban Boundary Expansion scenario, particularly of larger sites, could put the City in a deficit. As a result, the City will need to continue monitoring the supply of employment lands over time to confirm that it remains adequate.

Removal of Neighbourhood Plan Policies

The Provincial modifications included amendments to pre-existing implementation policies that addressed the role of Neighbourhood Plan documents by indicating that they no longer reflect municipal or provincial policies, and no longer require Council approval for amendment. Council adopted Official Plan Amendment 167 did not amend the Neighbourhood Plan policies.

Key implications: Neighbourhood Plans are land use planning policies and mapping adopted by City Council to provide greater direction on land use planning matters for certain areas of the City. They include land use plans and policies relating to land use and densities, cultural heritage, urban design, natural heritage, etc., at the neighbourhood scale, and while they do not form part of the Official Plan, they inform the review of development applications, notably applications for intensification with respect to compatibility and neighbourhood level planned road networks. Removal of their status through the Minister's modifications provides less guidance to staff when reviewing development applications and undermines the local planning work that was done to establish these plans to guide long term development. The Province's reversal of these modifications will allow staff to continue to use these plans for guidance to inform the review of development applications.

It is noted that many of the Neighbourhood Plans were created prior to amalgamation and some of the policies and mapping do not align with current policy directions. Where there is a conflict, Official Plan policy would prevail. Notwithstanding this, the plans continue to provide helpful guidance in the review of development applications.

Community Node Policy

A modification was made to replace a Council adopted policy related to development densities in Community Nodes, specifically the Ancaster Community Node which was originally approved for a density range of 50 persons and jobs per hectare. The modification identifies that, notwithstanding Secondary Plan policies, lands designated

“Mixed Use-Medium Density” in a Community Node area are permitted additional density above 150 units per hectare and building heights up to eight storeys if they meet certain design criteria.

Key implications: This policy is contrary to the intent and vision of Secondary Plans developed in consultation with the community, with respect to directions for heights and densities contained within Secondary Plans. This modification also conflicts with the Council adopted amendments to the Official Plan for “Mixed Use-Medium Density” designated lands which were permitted additional heights up to 12 storeys. While the intent may have been to increase permissions in certain Secondary Plan areas with height caps below 8 storeys, it also caps heights in Community Nodes across the City at 6-8 storeys that may have otherwise been permitted 12 storeys. The modification has the effect of overriding site specific policy permissions in Secondary Plans in Community Nodes that may have permitted heights above 8 storeys, creating an inoperable policy framework for development approvals. The prescription of densities in the “Mixed Use-Medium Density” designation is counter to the current policy framework for these areas which does not utilize a density metric, but rather built form.

As it relates to the Ancaster Community Node, the density target that previously applied was based on specific constraints related to transportation, infrastructure and compatibility with surrounding land uses, and there may be unintended consequences for increasing the density permissions in this area. A Provincial decision to reverse this modification as recommended by Report PED23252 would remove the policy conflicts and enable the City to apply specific height policies contained within existing Secondary Plans. The reversal would also reinstate the reduced density target for the Ancaster Community Node which would assist the City in ensuring that new development in the area is built to an appropriate scale and density and can be adequately served by existing and planned infrastructure. There may be opportunities to review height permissions within Secondary Plan areas in the future through a fulsome and public secondary planning process that would ensure that increases in height are appropriate and can be supported by the necessary infrastructure.

Removal of Height Limit in High Density Areas of Neighbourhoods

The Ministry modifications removed the 30 storey height limits for high density residential areas in the “Neighbourhoods” designation included in the Council adopted Official Plan Amendment 167. This height limit was originally added to the Neighbourhoods “High Density Residential” designation to be consistent with the height limitations in the Downtown Hamilton Secondary Plan, which was established after extensive public consultations. The Ministry modifications did not remove any policies that address compatibility for higher profile buildings, however.

Key implications: The Provincial modification to remove the height limits in the “High Density Residential” areas of the Neighbourhoods designation create a disconnect between the policies that apply to the Downtown Urban Growth Centre with respect to building height limits and the visual prominence of the Niagara Escarpment. The modification creates a scenario where building heights could be greater outside of the Downtown, which is intended to be a focal area for strategic growth and intensification. Taller building heights are not required to achieve residential intensification and growth required by the Council adopted growth strategy. A Provincial decision to reverse this modification as recommended by Report PED23252 would support that new buildings in the lower city maintain heights lesser than the escarpment to mitigate visual impacts to this dominant landmark feature.

Potential Changes to Growth Plan and Provincial Policy Statement

In April 2023, the Province posted a proposed new policy document on the Environmental Registry of Ontario, the “Provincial Planning Statement, 2023”. This proposed Provincial Planning Statement, 2023 was intended to replace the Growth Plan, 2019 and the Provincial Policy Statement, 2020 with a single consolidated document. No legislation has been passed to enact the new document at this time, however, if the proposed document is approved it could have significant implications for the City’s Official Plan and conformity with provincial policies. Staff provided comment on the draft Provincial Planning Statement in Report PED23145 in June 2023. Some of the significant concerns with the proposed policies are noted below.

The proposed Provincial Planning Statement would allow private landowners to submit an Official Plan Amendment to expand the urban boundary, whereas currently a Municipal Comprehensive Review must be municipally initiated if the proposed expansion is greater than 40 hectares. In place of these requirements, the proposed Provincial Planning Statement, 2023 establishes criteria that municipalities should consider before expanding its urban boundaries.

Another significant concern is that the proposed Provincial Planning Statement does not carry forward specific policies and requirements of the Growth Plan including minimum intensification targets, employment land protections, enhanced settlement boundary expansion requirements as well as detailed policies that support urban growth centres, public infrastructure, natural heritage systems and transit planning among others.

There is a need to continue to communicate with the Province to understand how these future changes may impact the reversal of the Province’s decision on Official Plan Amendments 167 and 34 and the Council adopted No Urban Boundary Expansion growth option.

Impact on Development Applications and Official Plan Amendments

There are multiple *Planning Act* applications which were in progress at the time of the Ministerial approval of the Official Plans or that have been submitted since that time. Numerous applications were impacted by Official Plan Amendment 167, including seven that are directly impacted by the Provincial modifications which are listed in Appendix “C” to Report PED23252.

As noted previously, an Official Plan Amendment was also enacted in July 2023 to establish a detailed policy framework for Secondary Planning in Urban Expansion Areas (Official Plan Amendment 185). A reversal of the urban boundary expansions would require staff to review these policies and pass a new official plan amendment to amend or delete this policy framework.

Potential Impacts on Development Charges By-laws

Based on the forthcoming expiration of the City’s current Development Charges By-law, a new Development Charges By-law is required to be in place by mid-June 2024. As a result of the November 2022 Provincial decision on Official Plan Amendment 167, the City was required to reassess the master plans to be used within the City’s Development Charges Background Study. Due to the extent of the changes to the City’s Urban Boundary, it was not feasible to undergo a full 2051 planning horizon master plan process based on the Provincial changes to the urban boundary. Therefore, the City is moving forward with 2031 planning horizon master plans in its 2024 Development Charges Background Study. However, had the City been able to move forward with the urban boundary adopted by Council in June 2022, then the City would have been able to utilize 2051 planning horizon master plans in the 2024 Development Charges Background Study.

The City will need to complete master plans with a 2051 planning horizon using the ultimate urban boundary approved by the Province. Section 5(8) of the *Development Charges Act, 1997*, as amended, requires that municipalities phase in Development Charges when a new Development Charges by-law is adopted. This required phase-in means that the City is not collecting the amount required to fund the growth portion of infrastructure for the first four years that a Development Charges By-law is in place. Since the City will consider adopting new service specific Development Charges By-laws once the 2051 master plans are complete, and the City would not have needed to pass new Development Charges by-laws had the Province not initially expanded the urban boundary, Recommendation (b)(v) requests the removal of the requirement to phase-in Development Charges for the initial service specific Development Charges by-laws which utilize the 2051 planning horizon master plans.

Cost Recovery

The November 2022 decision on Official Plan Amendments 167 and 34 resulted in a significant amount of staff resources being needed to review and implement the decision. Consultant costs were also incurred. Key matters that incurred costs included:

General Official Plan Work

- Review of implications and preparation of staff report to Planning Committee;
- Updating policies and maps to incorporate modifications into the Official Plans;
- Identification of issues and conflicts requiring future amendments to correct;
- Additional analysis to determine revised greenfield density and intensification targets, which included external consultant costs related to updating the Land Needs Assessment; and,
- Additional analysis to assess potential impacts of the 1400 South Service Road employment land conversion, which included external consultant costs related to reviewing the Employment Land Needs Assessment.

Urban Expansion Areas

- Reviewing approaches to Secondary Planning and preparing a staff report to Planning Committee;
- Developing a draft policy framework and guideline document for Secondary Planning within Urban Expansion Areas;
- Public engagement on a policy framework and guidelines for Secondary Planning within Urban Expansion Areas, which included advertising and outreach, a project website, a survey, a virtual public meeting and two in-person open houses. External facilitator costs were also incurred for engagement and engagement reporting;
- A second report to Council on policy framework and guidelines and passing of Official Plan Amendment 185;
- Preparation of cost estimates for fee development;
- Legal staff review and input on processes, fees and hybrid secondary plan approaches;
- Review and processing of Formal Consultation FC-23-040 for the White Church urban expansion area;
- Review and processing of Formal Consultation FC-23-049 for the Twenty Road West urban expansion area;
- Facilitation of meetings between staff and landowner groups to confirm terms of reference requirements for supporting studies required for secondary planning;

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 20 of 23**

- Detailed staff review of a draft Terms of Reference for a privately initiated Secondary Plan for the Twenty Road West urban expansion area; and,
- Meetings with the Elfrida landowners group (Elfrida Community Builders Group) to discuss the potential for a hybrid approach to Secondary Planning, and subsequent review of materials submitted by the Elfrida landowners group related to a hybrid approach.

Development Charges Study and Master Plans

- Preparation of staff report to provide direction to master plan teams and development charges consultant;
- Additional work by Corporate Strategic Growth Initiatives and Development Charges Team to adjust to a phased approach, which includes an interim Development Charges By-law update in time for the 2024 Development Charges By-law deadline, and a future updated Development Charges By-law; and,
- Some additional work incurred by the Transportation Master Plan Team and the Water, Wastewater and Stormwater Management Master Plan Team to assess two different growth models.

Staff will be preparing estimates of costs incurred on these tasks, to enable discussions with the Province about receiving assistance for these costs.

Effective Date of Legislation

The Province has not provided an effective date of the legislation in any information provided to staff and are open to receiving input on this matter. Options include the effective date being:

- The date of the Ministry's approval with modifications of the adopted Official Plan Amendments on November 4, 2022;
- The date of the provincial announcement on October 23, 2023; or,
- The date legislation is approved by the Province "rolling back" modifications to Official Plan Amendments 167 and 34.

Staff recommend that the earlier date of the Ministry's approval with modifications of the adopted Official Plan Amendments on November 4, 2022 apply as the effective date for Official Plan Amendments 167 and 34. Staff further recommend that clear language be provided in the legislation that policies apply retroactively.

Transitional Matters

Staff note there is a lack of clarity on how the Province intends to address the transition of reversing the Minister’s decision to modify Official Plan Amendments 167 and 34 on November 4, 2022. Staff are therefore recommending that the City request the Ministry of Municipal Affairs and Housing to include clear legislative language in the transition provisions of the implementing legislation to address potential complexities and reduce the burden on municipalities arising from the reversal of the Minister’s decision to modify official plans.

The table below indicates staff’s recommendation for the preferred approach to transitional matters. For clarity, the following terminology is relied on when referring to transitional matters:

- “Modified Official Plans”, means municipal Official Plans as modified by the Minister on November 4, 2022;
- “Reverted Official Plans”, means municipal Official Plans as approved by the Province following the October 23, 2023 announcement, that will come into effect on a date to be determined; and,
- “Implementing legislation”, means the legislation that will reverse the Modified Official Plans and implement the Reverted Official Plans.

Effective Date for Official Plan Amendments 167 and 34	Retroactive to November 4, 2022
Between November 4, 2022 to the date on which the implementing legislation comes into effect.	Development applications received by municipalities between November 4, 2022 and the date on which the implementing legislation comes into effect shall be subject to and assessed based on the policies of the Reverted Official Plans.
Between November 4, 2022 to the date on which the implementing legislation comes into effect.	For any by-law passed by Council under Section 34 of the <i>Planning Act</i> on or after November 4, 2022, where within the time limited for appeal no appeal is taken, the by-law shall be conclusively deemed to be in conformity with the in-effect official plan on and after the day the by-law was passed.

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 22 of 23**

Between November 4, 2022 to the date on which the implementing legislation comes into effect.	Any fees required to be refunded under the <i>Planning Act</i> are paused until the implementing legislation is in full force and effect, and further that the applicable refund timeline be extended by no less than 120 days to provide municipalities with sufficient time to re-process planning applications under the Reverted Official Plans as needed.
Between November 4, 2022 to the date on which the implementing legislation comes into effect.	Provisions of the <i>Planning Act</i> that provide a right-of-appeal to the Ontario Land Tribunal for the failure of the municipality to make a decision be paused until the implementing legislation is in full force and effect, and further that that statutory timeline to make a decision be extended by no-less than 120 days to provide municipalities with sufficient time to re-process planning applications under the Reverted Official Plans as needed.
Between October 23, 2023 to the date on which the implementing legislation comes into effect.	Development applications received on or after the date of the Minister’s announcement on October 23, 2023, are frozen from municipal processing and exempt from statutory timelines under the <i>Planning Act</i> until the Reverted Official Plans come into effect.

Limitation of Legal Action and Remedies

The Minister of Municipal Affairs and Housing has indicated that the proposed legislation to reverse recent official plan decisions would include indemnification provisions to limit legal action from being pursued against the Province in relation to lands impacted by the reversal. Staff anticipate that the Province will introduce indemnification provisions similar to those included in *Bill 136, Greenbelt Statute Law Amendment Act, 2023* which, if passed, would significantly limit legal action from being pursued in relation to lands being added to or removed from the Greenbelt Area.

The City’s comments to the Province on Bill 136 (see Report PED23244) requested that the proposed limitations with respect to legal action and remedies be clarified to specify that these protections extend to municipalities. Similarly, staff are recommending that the City request that the Ministry of Municipal Affairs and Housing include clear language in the implementing legislation that would bar legal proceedings and remedies

**SUBJECT: Provincial Announcement Impacting Provincial Decisions on
Municipal Official Plans and Official Plan Amendments (PED23252)
(City Wide) - Page 23 of 23**

being brought against municipalities in relation to the reversal of the Minister's modified official plans.

ALTERNATIVES FOR CONSIDERATION

1. Council may amend any of the comments and changes contained within Appendices "A" and "B" to Report PED23252 on modifications which the City is requesting to be maintained. This could include requesting additional policy modifications to be carried forward.
2. Regarding the issue of urban boundary expansions, Council has the option of approving in whole or in part the boundary expansion outlined in the staff recommended "Ambitious Density" growth scenario that provided for 1,310 ha of urban expansion area.
3. Council could direct staff to look into the feasibility of using other planning tools provided for in the *Planning Act*, for example a Minister's Zoning Order, for matters such as:
 - Specific properties impacted by modifications, for applications in process or where decisions have been made, should Council want to ensure that the intent of the Council adopted Official Plan Amendment 167 is maintained; and/or,
 - On lands within the 2,202 ha urban expansion area originally created by modification during the Provincial approval of Official Plan Amendment 167 to ensure the City will not receive urban boundary expansion requests for a specified period of time.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED23252 – Comment Table for Official Plan Amendment 167 Modifications

Appendix "B" to Report PED23252 – Comment Table for Official Plan Amendment 34 Modifications

Appendix "C" to Report PED23252 – Development Applications Impacted by Minister's Decision

Appendix "D" to Report PED23252 – November 2, 2023 Letter from the Honourable Paul Calandra Minister of Municipal Affairs and Housing

MP/CT/LV:sd