



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
Planning Division

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| <b>TO:</b>                | Chair and Members<br>Planning Committee   |
| <b>COMMITTEE DATE:</b>    | December 5, 2023  |
| <b>SUBJECT/REPORT NO:</b> | Bill 150 - <i>Planning Statute Law Amendment Act, 2023</i> and<br><i>Official Plan Adjustments Act, 2023</i> (PED23261) (City Wide) |
| <b>WARD(S) AFFECTED:</b>  | City Wide   |
| <b>PREPARED BY:</b>       | Charlie Toman (905) 546-2424 Ext. 5863  |
| <b>SUBMITTED BY:</b>      | Anita Fabac<br>Acting Director, Planning and Chief Planner<br>Planning and Economic Development Department                          |
| <b>SIGNATURE:</b>         |   |

### RECOMMENDATION

- (a) That Council adopt the submissions and recommendations, as attached in Appendix "A" to Report PED23261, regarding Bill 150 *Planning Statute Law Amendment Act, 2023*;
- (b) That Council confirm that the submission and recommendations, as attached in Appendix "A" to PED23261, are in addition to the City's submissions and recommendations contained in Report PED23252;
- (c) That the Acting Director of Planning and Chief Planner and the City Solicitor be authorized to make the submission on Bill 150, *Planning Statute Law Amendment Act, 2023*, as attached in Appendix "A" to Report PED23261.

### 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 through legislation which would include its modifications made to Urban Hamilton Official Plan

Amendment 167 and Rural Hamilton Official Plan Amendment 34 to, among other things, expand Hamilton's urban boundary.

On November 16, 2023, the Province introduced Bill 150, *Planning Statute Law Amendment Act, 2023* which would enact the *Official Plan Adjustments Act, 2023* which, if passed would:

- Reverse provincial decisions on Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34 and approve municipally adopted official plans retroactive to the date of provincial approval, which for the City of Hamilton would be November 4, 2022;
- With the exception of three modifications discussed in this report, deem the Provincial modifications to Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34 as never been made;
- Limit legal action from being pursued against the Province in relation to lands impacted by the reversal as well as the enactment, amendment or repeal of Minister Zoning Orders;
- Requires decisions made under the *Planning Act* after November 4, 2022 (date the Provincial modifications came into effect) to conform with the official plans, as approved or amended by the legislation; and,
- Permit development with a valid building permit to proceed.

The Province is requesting input on the legislation through Environmental Registry of Ontario posting # 019-7885 by December 16, 2023. The Minister of Municipal Affairs and Housing provided a letter to the City, attached as Appendix "B" to Report PED23261, clarifying that the Province is seeking feedback on the legislation together with the feedback requested through the November 2, 2023 letter, attached as Appendix "C" to Report PED23261.

On November 14, 2023, Planning Committee endorsed Report PED23252 which recommended that City 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 which would result in, among other things, the removal of provincially imposed urban expansion areas. Report PED23252 also identified 26 Ministry of Municipal Affairs and Housing modifications that should be retained as well as recommended provisions to be included in the anticipated legislation related to barring legal proceedings and remedies from municipalities, transitional and Development Charge matters. These recommendations were approved by City Council on November 22, 2023.

If passed, Bill 150 would not conflict with City Council's position on Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan 34 as adopted on June 8, 2022. However, Staff have reviewed the legislation against Report PED23252 and find

that it does not clearly implement or address the City's comments respecting legal proceedings and remedies, transitional and Development Charge matters. Staff recommend that the City of Hamilton provide the comments in Appendix "A" to Report PED23261 to the Province which are intended to be reviewed together with the City's comments contained in Report PED23252.

**Alternatives for Consideration – See Page 7**

**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. To recover costs associated with the decision, Recommendation (c) to Report PED23252 directed 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:** Bill 150 was tabled and completed First Reading on November 16, 2023 and debated at Second Reading on November 20, 2023. The total implications of Bill 150 cannot be confirmed at this time as this Bill is subject to change through the legislative process and Legal staff will continue to monitor the status and progression of Bill 150 before the Provincial Legislature.

**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.

A detailed chronology of reports, announcements and decisions that occurred since 2021 related to the City's long-term growth is provided in Appendix "B" attached to Report PED23261.

## **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 of the 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**

Staff from Legal Services were consulted in the drafting of this report, recommendations, and appendices.

### **Previous City Consultation on Municipal Comprehensive Review**

As discussed more extensively in Report PED23252, the City had 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.

### **Public Submissions Received on November 14, 2023 respecting Report PED23252**

Planning Committee received a total of 688 written submissions and six delegation requests regarding Report PED23252 on November 14, 2023. The majority of the written submissions received called for restoring the no urban boundary expansion growth strategy approved by City Council in June 2022. Submissions were made on

behalf of landowner groups within the Twenty Road West, White Church Road and Elfrida urban expansion lands asking the City to request that the Province keep these associated lands within the urban boundary to meet Hamilton's future housing needs.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

Staff have reviewed the proposed legislation against the City's comments to the Province on the planned reversal of its modifications discussed in Report PED23252.

### **Reversal of Provincial Modifications**

If passed, the legislation would reverse all but three of the 77 Ministry modifications to Urban Hamilton Official Plan Amendment 167 and reverse all 25 modifications to the Rural Hamilton Official Plan. The three modifications proposed by the Province to remain are:

- Section B.3.4.4.11 (Archaeological Assessment Requirements) - to provide additional clarification and correct policy to ensure that all indigenous communities with an interest are notified where a marked or unmarked cemetery or burial place is found. (Modification 18)
- Section C.3.2.4 (Urban Area General Provisions) - to specify that land use compatibility between sensitive land uses, major facilities and major office uses shall be in accordance with City's Employment Area designation general policies. (Modification 26)
- Section E.5.2.7.1 b) (Employment Area General Provisions) - to add value and ensures conformity with new terms and policies in the Growth Plan for major facilities, major retail uses, and major office uses. (Modification 36)

As discussed in Appendix "A" to Report PED23252, staff supported these three modifications remaining. Staff recommend that the City reconfirm its support to retain the additional 23 modifications identified in Appendix "A" to Report PED23252 which were minor and added definitions that provide clarification or contribute to interpretive conformity with Provincial policies. Staff note that if the Province chooses not to preserve these additional modifications it is not anticipated to have a significant impact on the application and implementation of Official Plan policies. The additional modifications could be implemented through future housekeeping amendments to the Official Plans.

### **Effective Date and Inclusion of Transitional Legislation**

The proposed *Official Plan Adjustments Act, 2023* includes clauses that the specific decisions of the Minister made under Section 17(34) of the *Planning Act* are deemed to have never been made, including the Minister's decision on November 4, 2022 with

respect to Official Plan Amendments 167 and 34 and the effective date of approval of Hamilton's Official Plans would be November 4, 2022. Through Report PED23252, staff had supported November 4, 2022 as being the effective date of the reverted Official Plans.

The proposed legislation also contains provisions that any decision of a municipality or the Ontario Land Tribunal made under the *Planning Act* must conform to the official plan as approved or amended. Staff have found the wording of these provisions to be unclear, making it difficult to determine what is the effect of the proposed legislation on development applications for which a decision has been made both by the City and the Ontario Land Tribunal, are still being processed, or are pending matters before the Ontario Land Tribunal. Staff recommends clarification on how the retroactive effect of the legislation would impact decisions of the municipality or the Ontario Land Tribunal where those decisions, including an implementing zoning by-law or site plan, may not conform with the retroactively in force official plan as approved or amended by the proposed legislation.

Through Report PED23252, staff reviewed all development applications that were in progress at the time of the Ministerial approval of the Official Plans or that have been submitted since that time. Seven applications were identified as being directly impacted by the Provincial modifications which were listed. Since the writing of Report PED23252, the status of two planning applications have changed with:

- Official Plan Amendment Application UHOPA-21-018 and Zoning By-law Amendment Application ZAC-21-039 for lands located at 1400 South Service Road, Stoney Creek, being appealed to the Ontario Land Tribunal for lack of decision. Provincial modifications to Official Plan Amendment 167 included the conversion of the lands from "Employment Area" to "Neighbourhoods" and the applications are to amend the Fruitland-Winona Secondary Plan and Zoning By-law to allow mixed-use, high density uses; and,
- The submission of an Official Plan Amendment Application for a privately initiated Secondary Plan that includes the Twenty Road West lands added to the urban boundary through Provincial modifications. The applicant, a group of landowners, had submitted a Formal Consultation application (FC-23-049) in March 2023.

Staff are unclear on the effect Bill 150 would have on these matters as the proposed legislation does not include transitional policies similar to those recommended by staff in Report PED23252 including that development applications be frozen from municipal processing and exempt from statutory timelines under the *Planning Act*. Staff have requested clarification from the Province and continue to recommend clearer transition policies. Staff recommend that these earlier recommendations be emphasized in the City's submission on Bill 150, specifically referencing the two applications noted above.

### **Limitation of Legal Action and Remedies.**

The legislation introduces various clauses intended to limit or bar legal actions from being taken both with respect to the proposed removal of Provincial modifications to Official Plans and to the enactment, amendment or repeal of Minister's Zoning Orders.

As detailed in Report PED23252, the City of Hamilton requested that the implementing legislation include clear language that would bar legal proceedings and remedies being brought against municipalities in relation to the reversal of the Minister's modified official plans.

In particular, Section 4(d) of the *Official Plan Adjustments Act, 2023* provides specific immunity for employees of the Crown and Executive council with respect to representations made in relation to Section 1(1). Staff recommend that "current or former employee, officers of agents of municipalities" be added to Section 4(d) to ensure this immunity is clearly extended to municipalities. Staff also recommend that language be included that would permit municipalities to request compensation from the Province to account for costs incurred in relation to the official plan decision and reversal.

### **Impacts on Development Charges By-laws**

As detailed in Report PED23252, the City of Hamilton requested that the proposed legislation be modified to 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.

The legislation does not amend the *Development Charges Act, 1997* and does not address the City's earlier comment. Staff recommend that the need to remove the phase in requirement be emphasized in the City's comments on Bill 150.

### **ALTERNATIVES FOR CONSIDERATION**

Council may direct staff to not submit comments to the Province; however, Staff do not recommend this option as the comments in this report build upon the City's comments sent to the Province through Report PED23252, including reconfirming its position on Urban Hamilton Official Plan Amendment 167 and Rural Hamilton Official Plan Amendment 34, as adopted by Council on June 8, 2022.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to PED23261 – Comment Table on Bill 150, *Planning Statute Law Amendment Act, 2023*

Appendix "B" to PED23261 – November 16, 2023 Letter from the Honourable Paul Calandra Minister of Municipal Affairs and Housing

Appendix "C" to PED23261 – November 2, 2023 Letter from the Honourable Paul Calandra Minister of Municipal Affairs and Housing

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