




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

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| TO: | Chair and Members Planning Committee |
| COMMITTEE DATE: | October 18, 2024 |
| SUBJECT/REPORT NO: | City Initiated Official Plan Amendments - Formal Consultation and Complete Application Requirements under Bill 185 (PED24134) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | Charlie Toman (905) 546-2424 Ext. 5863 Jennifer Allen (905) 546-2424 Ext. 4672 Jennifer Haan (905) 546-2424 Ext. 1230 Johanna Black (905) 546-2424 Ext. 1324 |
| SUBMITTED BY: | Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department |
| SIGNATURE: |  |

RECOMMENDATION

- (a) That **City Initiative CI-24-G – City Initiated Official Plan Amendments – Formal Consultation and Complete Application Requirements under Bill 185**, to amend policies in Volume 1 – Parent Plan and Volume 2 – Secondary Plans and Rural Settlement Areas of the Urban Hamilton Official Plan and Rural Hamilton Official Plan, in order to align with and respond to *Planning Act* changes resulting from Bill 185, *Cutting Red Tape to Build More Homes Faster Act, 2024*, be **APPROVED** on the following basis:
- (i) That the Draft Urban Hamilton Official Plan Amendment, attached as Appendix “A” to Report PED24134, which has been prepared in a form satisfactory to the City Solicitor, be adopted by Council;
 - (ii) That the Draft Rural Hamilton Official Plan Amendment, attached as Appendix “B” to Report PED24134, which has been prepared in a form satisfactory to the City Solicitor, be adopted by Council;

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- (iii) That the proposed Official Plan Amendments are consistent with the Provincial Policy Statement, 2020, the Provincial Planning Statement, 2024 and the Greenbelt Plan, 2017;
- (b) That **City Initiative CI-24-G – City Initiated Official Plan Amendments – Formal Consultation and Complete Application Requirements under Bill 185**, to amend policies in Subsection D.7 of the former Hamilton-Wentworth Official Plan, in order to align with and respond to *Planning Act* changes resulting from Bill 185, *Cutting Red Tape to Build More Homes Faster Act, 2024*, be **APPROVED** on the following basis:
 - (i) That the Draft Hamilton-Wentworth Official Plan Amendment, attached as Appendix “C” to Report PED24134, which has been prepared in a form satisfactory to the City Solicitor, be adopted by Council;
 - (ii) That the proposed Official Plan Amendments are consistent with the Provincial Policy Statement, 2020, the Provincial Planning Statement, 2024 and the Greenbelt Plan, 2017;
- (c) That the draft By-law to amend By-law No. 08-297, attached as Appendix “D” to Report PED24134, which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council;
- (d) That staff be directed to investigate opportunities to incentivize the Formal Consultation process, including a review of the Planning Division fees;
- (e) That staff report back to Planning Committee in Q3 2025 with an update on the effectiveness of the policies and if any additional amendments are required.

EXECUTIVE SUMMARY

The purpose of this report is to align with and respond to changes to the *Planning Act* resulting from Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*, specifically the elimination of pre-consultation requirements (Formal Consultation) for Official Plan Amendments, Zoning By-law Amendments, Site Plan Control, and Draft Plan of Subdivision applications, including the applicant’s ability to forward motions for deeming applications complete to the Ontario Land Tribunal at any time during the process.

As of June 6, 2024, the date Bill 185 received Royal Assent, the City’s Formal Consultation process is no longer a mandatory process for planning applications. This leaves a gap in the application review process as the City no longer has a mechanism

to ensure that all of the necessary reports, studies and information are submitted upfront with an application.

The recommended Official Plan Amendments will establish minimum submission requirements (e.g., technical plans and studies) that must be submitted with Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan applications if an applicant chooses to not engage in pre-consultation (Formal Consultation). Without the amendments, the ambiguity of what constitutes a complete application will affect the ability to process applications in a timely manner and may lengthen the process and result in additional motions being forwarded to the Ontario Land Tribunal for determination of complete application.

There is urgency to bring forward these amendments to ensure that planning applications include all information required to fully assess and for Council to make a decision within the timelines legislated in the *Planning Act*. While Bill 185 repealed the requirements to refund fees in respect to applications that exceed the 60, 90, and 120 day processing timelines, staff are committed to maintaining the process improvements that have been put in place to meet these timelines that were implemented through Bill 109, *More Homes for Everyone Act, 2022*.

This report is implementing Recommendation (e) from Report PED24097.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The elimination of pre-consultation requirements through Bill 185 creates a loss of revenue for the City from Formal Consultation applications. Currently, the fee for a Formal Consultation application for Site Plan is \$12,215, and the fee for a Formal Consultation application for a Zoning By-law Amendment, Official Plan Amendment, Draft Plan of Subdivision and Draft Plan of Condominium (vacant land only) is either \$9,230 or \$7,945 depending on whether a Development Team Meeting is requested. It is anticipated that the elimination of this mandatory process would result in a reduction of approximately \$600,000.00 annually in development fees.

Staffing: Without a clear process and policy framework staffing resources could be impacted as a result of additional motions forwarded to the Ontario Land Tribunal for determination of the completeness of an application. With the removal of pre-consultation (Formal Consultation) it is expected that staff will receive more inquiries from applicant's requesting clarification on submission requirements for which there is no fee. Furthermore, the

review of development application submissions to confirm completeness will become more onerous without the benefit of the Formal Consultation Document. Overall, it is anticipated that the intake process of each application will require additional staff time.

Legal: Amending the Official Plan to clearly identify and prescribe the minimum submission requirements for different application types would support the City's position should we receive an appeal under those new sections of the *Planning Act*, being Subsections 22 (6.2), 34 (10.5), 41 (3.7), and 51 (19.2).

HISTORICAL BACKGROUND

Bill 109, *More Homes for Everyone Act, 2022*

Bill 109 received Royal Assent on April 14, 2022. The Bill amended the *Planning Act* to require municipalities to refund development application fees if a decision is not made within the legislative timelines of 60, 90 and 120 days. These changes came into effect January 1, 2023. In response to the legislative timeframes, the City made improvements to its existing Formal Consultation application process. The improvements created the opportunity for more engagement on development applications with the applicants and gave applicants further direction on the requirements for a complete application, provided scoped submission requirements, and allowed for collaborative discussion on the details of the application. Mandatory Formal Consultation was an integral step in the application process for Draft Plan of Subdivision, Official Plan Amendment, Zoning By-law Amendment and Site Plan Control applications and a key factor in the approach to streamline development applications through Bill 109 implementation.

Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*

On June 6, 2024, Bill 185 received Royal Assent. The Bill eliminated pre-consultation requirements (Formal Consultation Application) coupled with additional amendments to allow an applicant to forward motions for deeming applications complete to the Ontario Land Tribunal at any time during the process. Prior to these changes through Bill 185, Subsections 22 (3.1), 34 (10.0.1), 41 (3.1) and (3.2), 51 (16.1) of the *Planning Act* required a council to permit applicants to consult with the municipality before submitting a request to amend an official plan or zoning by-law or submit applications for site plan control or plan of subdivision. These subsections also authorized a council to pass a by-law requiring applicants to consult with the municipality before submitting such a request. With regard to determining complete application requirements, the *Planning Act* permitted a 30-day timeframe within which a motion for directions could be sent to the Ontario Land Tribunal to determine if a complete application was submitted.

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On May 22, 2024, Council endorsed Report PED24097 containing the City's responses to Bill 185 and, upon Royal Assent, directing staff to prepare necessary amendments to the Urban Hamilton Official Plan and Rural Hamilton Official Plan, as well as any other required policies and procedures, to give effect to the proposed changes.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Provincial Planning Policy framework is established through the *Planning Act* (Section 3), the Provincial Policy Statement, and other Provincial policy plans. 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. Bill 185 has made amendments to *Planning Act* application(s) processes which require municipalities to respond to these changes.

It is noted that the Provincial Planning Statement (2024) comes into effect and A Place to Grow: Growth Plan for the Greater Golden Horseshoe is being repealed on October 20, 2024. Given the changes to Bill 185 that removed mandatory formal consultations an update of submission requirements will help ensure compliance with the new PPS.

To ensure the City's Official Plan policies are consistent with Provincial policy frameworks, amendments are required to the Urban Hamilton Official Plan, Rural Hamilton Official Plan, former Hamilton-Wentworth Official Plan, and former City of Hamilton Official Plan as it relates to the Setting Sail Secondary Plan.

Urban and Rural Hamilton Official Plan Policies

Chapter F - Planning Act Implementation Tools of the Urban and Rural Hamilton Official Plans contains policies for Complete Application Requirements and Formal Consultation. The policies provide direction for mandatory Formal Consultation prior to the submission of an application for official plan amendment, zoning by-law amendment, draft plan of subdivision or site plan; the purpose of formal consultation and waiver there of; the table listing the other information and materials that may be required; and policies on deeming applications complete. These policies were last amended in August 2022 to implement process changes resulting from Bill 109.

**West Harbour (Setting Sail) Secondary Plan Area
(Hamilton Wentworth Official Plan and former City of Hamilton Official Plan)**

The West Harbour (Setting Sail) Secondary Plan was approved by Council in 2005. Due to appeals to the Ontario Municipal Board (now Ontario Land Tribunal), the Secondary

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Plan was not deemed to be in effect until the Ontario Land Tribunal issued its final decision in 2012. This decision added the Secondary Plan to the former City of Hamilton Official Plan and former Hamilton Wentworth Official Plan as those were the Official Plans in effect for the West Harbour (Setting Sail) Secondary Plan area.

Part D – Implementation of the former Hamilton-Wentworth Official Plan contains policies under Section 7A that address formal consultation and application submission requirements. Subsection D.11 of the former City of Hamilton Official Plan redirects back to the Regional Official Plan for complete application and formal consultation requirements. Therefore, staff are recommending amendments to Part D of the former Hamilton-Wentworth Official Plan to ensure that planning applications submitted within the West Harbour (Setting Sail) Secondary Plan area are processed consistently with the rest of the City.

RELEVANT CONSULTATION

Consultation has been undertaken with staff in the Planning Division, Growth Management Division, Transportation Planning and Parking Division, Public Works Department (Hamilton Water, Environmental Services) and Legal Services to obtain feedback from City Departments and Divisions on the minimum submission requirements for Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan Control applications. Further, mock application intake reviews were carried out by staff using previous formal consultation applications to test the interpretation of the amended policies and new schedule of submission requirements and compare the submission requirements identified through each process.

To ensure that staff have the policies to deem an application complete in the absence of a formal consultation process, consultation with the development industry stakeholders could not occur in advance of the Public Meeting. Notification of the upcoming staff Report and Official Plan Amendments was given to the Development Industry Liaison Group (DILG) on September 9, 2024.

Through Recommendation (e), staff will report back to Planning Committee in Q3 of 2025 with any feedback on the amended policies and processes, as well as any updates/improvements to the application submission process based on that feedback.

Notice of the proposed amendments was posted in the Hamilton Spectator on October 11, 2024.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Rationale for Complete Application Submission Requirements

Through the implementation policies of the City's Official Plans, the City can identify what technical plans and studies are required prior to deeming an Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan Control application complete. Prior to Bill 185, the City would confirm what the specific submission requirements are for these applications through the mandatory Formal Consultation process. A benefit of Formal Consultation is that it ensures that the submission requirements identified are specific to the proposed development and enables the City to remove submission requirements that are not necessary based on each individual proposal.

Now that applicants can choose not to submit a Formal Consultation application, staff are recommending that the Official Plans identify submission requirements for each planning application type with specific locational and proposal-based requirements that implement Official Plan policies. The Official Plan Amendments establish four specific criteria for each application type as follows:

- Minimum – required for the submission of a complete application for specific *Planning Act* application type(s) regardless of the context of the application;
- Locational – required for the submission of a complete application for specific *Planning Act* application type(s) when located in a specified area based on the applicable policies of the Official Plans;
- Proposal Based - required for the submission of a complete application for specific *Planning Act* application type(s) based on the use or scale of the proposal as specified in the applicable policies of the Official Plans; and,
- Discretionary - other information and materials that can be requested through the processing of *Planning Act* application(s) but are not required as part of the submission of a complete application. Discretionary submission requirements can also be identified as conditions of Draft Plan of Subdivision or Site Plan approval.

A clear process and policy framework to identify the requirements for a complete application is needed. Eliminating the mandatory Formal Consultation process removes the City's ability to 'right size' and tailor the submission requirements for each individual proposal. Staff anticipate that the total number of plans and studies required for a planning application will be greater for an applicant that does not go through the Formal Consultation process as the submission requirements will be based on the broader policy framework without the opportunity to consider the context of the proposal and determine if any of the applicable submission requirements can be waived.

The proposed amendments to the Urban Hamilton Official Plan, Rural Hamilton Official Plan and former Region of Hamilton-Wentworth Official Plan and supporting rationale are provided in Appendices “A”, “B”, “C”, “E” and “F” to Report PED24134, respectively.

Updates to Formal Consultation By-law No. 08-297

Formal Consultation By-law No. 08-297 was passed by Council on December 10, 2008, giving effect to mandatory formal consultation with City staff prior to the submission of applications for Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan Control. The By-law also provided delegated authority to the Director of Planning to oversee the formal consultation process and deeming applications complete. The City’s mandatory Formal Consultation process commenced in 2009 and has been an integral part of the planning application process since that time.

As a result of Bill 185, By-law No. 08-297 is required to be amended to remove the prerequisite for required/mandatory formal consultation. The delegated authority over the pre-consultation process and deeming applications complete is to remain with the Director of Planning / Chief Planner, and/or their designate. Appendix “D” to Report PED24134 contains the Draft By-law to amend the Formal Consultation By-law No. 08-297. The revisions / deletions to the Formal Consultation By-law No. 08-297 are summarized as follows:

Title

The title of By-law No. 08-297 has been revised to remove the reference to the “required” pre-consultation process, while still recognizing that the City must permit applicants the opportunity to pre-consult if they choose to do so.

Section 1 Definitions have been modified to update the position title for delegated authority, and to include the applicable *Planning Act* references for Site Plan Control applications.

Section 2 refers to the requirement for Formal Consultation. Under Bill 185, municipalities can no longer require pre-consultation in advance of *Planning Act* applications but must still permit an applicant the opportunity to pre-consult. As a result, the section has been revised to remove reference to a required process.

Section 5 refers to the City’s ability to deem an application incomplete in the absence of a pre-consultation meeting, or if an applicant fails to submit the other information and material identified through a pre-consultation process. This section has been updated to remove reference to pre-consultation being a required process.

Section 7 refers to the delegated authority of deeming applications complete. This section has been revised to clarify that pre-consultation is a voluntary process at the discretion of the applicant. It has further been revised to clarify the delegated authority to deem an application incomplete.

Section 8 refers to the waiving of the requirement for pre-consultation. This section has been deleted, as the Official Plan contains policy direction for when a formal consultation waiver can be considered.

Incentivize Formal Consultation Process

Pre-consultations (formal consultations) are a key step in the application process for Official Plan Amendment, Zoning By-law Amendment, Site Plan Control, and Draft Plan of Subdivision applications. Formal consultation ensures that the City receives all information needed to review and make recommendations, and in some cases issue approvals on applications and were a key factor in the approach taken to streamlining development applications through Bill 109 implementation.

Without a mandatory formal consultation process, there is no clear mechanism to identify to applicants what constitutes a complete application. This change will: create uncertainty for the City and applicants; and will affect the ability for staff to process applications in a timely manner as well as make informed recommendations and decisions to Council. It may result in the need for multiple submissions, lengthening the review process.

The draft Official Plan Amendments do not permit the City to issue a waiver for individual technical submission requirements if an applicant elects not to participate in the Formal Consultation process. By not participating in a Formal Consultation, staff will require the applicant to submit all of the identified materials and information for the specific application type as per the Official Plan Schedule. In comparison, the benefit of going through the Formal Consultation process allows the applicant the opportunity to discuss and potentially scope the application submission requirements with City staff.

To address deficiencies resulting from the shift of a mandatory Formal Consultation process to an optional process at the discretion of the applicant, staff will have to evaluate alternative processes and a review of application fees to encourage and incentivize the Formal Consultation process. This may include exploring financial incentives, similar to how Formal Consultation fees were previously credited towards future planning applications. Another option could be increasing the application fee for applicants that do not elect to participate in a Formal Consultation because without the benefit of the Formal Consultation, staff review will take longer. Staff will report back on this by Q3 of 2025.

Finalize Terms of Reference/Guidelines

With the removal of the mandatory Formal Consultation process, having the Terms of References/Guidelines in place is needed as staff will not have the opportunity to discuss the scope of work to be completed, which is usually discussed at the pre-consultation stage.

The Planning Division initiated this work as part of the Bill 109 process changes in 2022 to create Terms of References/Guidelines for the list of studies established in the Official Plans and provide clarity on the submission requirements. Phase 1 - Interim Draft Terms of References/Guidelines were brought forward in Report PED22112(d) and approved by the Planning Committee on November 29, 2022. The inventory of References/Guidelines for Phase 1 are available on the City's website. Staff continue to work on bringing Phase 2 of the Terms of Reference/Guidelines to completion with an anticipated delivery date of Q1 of 2025.

Next Steps

Planning staff are preparing a separate report to be brought forward specific to changes required to the Site Plan Control By-law. There will be a need to monitor the proposed policy changes to track the impacts on application processing timelines, and to ensure the review process continues to be both efficient and collaborative with applicants.

Staff will report back to Planning Committee within one year (Q3 2025) of these implemented changes with feedback received from applicants and key stakeholders, as well as key metrics on the impacts these process changes have on the overall application processing timelines. Staff will track the number of applicants who chose to go through the Formal Consultation process versus those who do not; delays in deeming applications complete; length of time it takes to obtain missing application materials, reports and information; number of Holding provisions imposed to address missing materials, etc.

Should these recommendations be approved, staff will update the application forms and the website to reflect the updated process.

ALTERNATIVES FOR CONSIDERATION

If Council does not approve the Official Plan Amendments applicants and staff do not have clear direction on submission requirements for each application there will be a gap in the application review process as the city no longer has a mechanism to ensure that all of the necessary reports, studies and information are submitted upfront with an application.

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Without the amendments, staff will not be able to make a decision on whether or not an application can be deemed complete or incomplete, affecting the ability to process applications in a timely manner. This, in turn, may result in additional motions being forwarded to the Ontario Land Tribunal for determination of a complete application.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A" to Report PED24134 – Draft Urban Hamilton Official Plan Amendment No. XX
- Appendix "B" to Report PED24134 – Draft Rural Hamilton Official Plan Amendment No. XX
- Appendix "C" to Report PED24134 – Draft Amendment No. XX to the former Region of Hamilton Wentworth Official Plan
- Appendix "D" to Report PED24134 – Draft By-law to amend By-law No. 08-297
- Appendix "E" to Report PED24134 – Proposed Text Amendments to the Urban Hamilton Official Plan – Implementation of Bill 185
- Appendix "F" to Report PED24134 – Proposed Text Amendments to the Rural Hamilton Official Plan – Implementation of Bill 185