



City of Hamilton Report for Consideration

To: Chair and Members
Planning Committee

Date: April 8, 2025

Report No: PED24175(a)

Subject/Title: Implementation of Changes to Section 41 of the
Planning Act – Site Plan Approval, in Response to
Provincial Bill 185

Ward(s) Affected: City Wide

Recommendations

1. That the Draft By-law attached as Appendix A to Report PED24175(a) to amend the Site Plan Control By-law to introduce the lapsing of Site Plan Approvals, which has been prepared in a form satisfactory to the City Solicitor, **BE ENACTED** by Council; and,
2. That the Phasing Condition attached as Appendix B to Report PED24175(a) to be added to the Standard Conditions of Approval for Site Plan applications within the Downtown Hamilton Community Improvement Project Area, **BE ENDORSED** by Council.

Key Facts

- The purpose of this Report is to recommend amendments to the City of Hamilton Site Plan Control By-law to introduce lapsing provisions for site plan approvals as provided for in the changes to the *Planning Act* made through Provincial Bill 185. The Provincial legislative changes allow municipalities to lapse/expire site plan approvals as a tool to address “stalled” developments that can limit progress on meeting provincial housing targets.
- Currently, site plan approvals in the City of Hamilton do not lapse and this creates challenges related to forecasting infrastructure needs, addressing “stalled” developments, and implementing policy changes.

- For site plan applications submitted on or after January 1, 2020, the *Development Charges Act* requires that development charges be “locked-in” based on the development charge rates applicable on the date that a complete application was submitted. The introduction of site plan lapsing will provide for a reset of the lock-in date after a prescribed time period, reducing the financial risk to the City as currently development charges can be locked in indefinitely.
- As directed by Planning Committee on October 24, 2024, staff have consulted with the development industry and have made revisions to the lapsing provisions in response to feedback received.
- Further in response to feedback received from the development industry, staff are recommending that the Standard Conditions of Approval for Site Plan applications within the Downtown Hamilton Community Improvement Project Area be revised to allow for the phasing of site plan approvals.

Financial Considerations

For developments subject to Site Plan Control and/or Zoning By-law Amendment and submitted on or after January 1, 2020, the *Development Charges Act, 1997* requires that development charges be “locked-in” based on the development charge rates applicable on the date that a complete Site Plan Control or Zoning By-law Amendment application is submitted (and if both apply, then the later of the two application dates applies). Bill 185 introduced a new “use it or lose it” tool for municipalities to use for site plan approvals. This tool ensures that the “locked-in” development charge rates expire if a building permit is not issued/construction does not occur in a reasonable amount of time. Previously, there was not any timeline for an owner to clear conditions and move the application to final approval (final and binding) which would then set the Development Charge lapsing clock to start.

The introduction of lapsing provisions to the Site Plan Control By-law will result in a new Site Plan Control application being required after a Conditional Site Plan Control approval lapses. This will reset the lock-in date for development charges which will then be determined based on the date that the new Site Plan Control application is submitted. The *Development Charges Act, 1997*, requires that a building permit be issued within 18 months of final site plan approval for the lock-in date to apply (24 months if final site plan approval is before June 1, 2024).

Background

On October 18, 2024, Planning staff brought forward a Report to Planning Committee recommending approval of a new Site Plan Control By-law to implement changes made to Section 41 of the *Planning Act* in response to Provincial Bill 185 (Report No. PED24175). The new Site Plan Control By-law included mandatory changes such as exempting publicly funded colleges and universities from Site Plan Control and removing mandatory pre-consultation for site plan applications. Staff also recommended implementing a new “use-it-or-lose-it” tool by introducing the following lapsing provisions for site plan approvals:

- Three year lapsing of Conditional Site Plan Approval plus a one-time, one year extension subject to criteria.
- No lapsing of Final Site Plan Approval.
- Automatic one year extension for existing Conditional Site Plan Approvals that have passed or are nearing their lapsing date.

Planning Committee deferred consideration of the proposed lapsing provisions to allow for further consultation with the Development Industry. The remainder of the new Site Plan Control By-law was approved by Planning Committee and was enacted by Council on October 23, 2024.

Following Planning Committee, staff held a special Development Industry Liaison Group Meeting on November 8, 2024, at City Hall. The feedback received at the meeting was used by staff to draft revised lapsing and phasing provisions that were presented to the Development Industry Liaison Group on January 20, 2025, and incorporated into the Draft By-law attached as Appendix A to Report PED24175(a) and the proposed phasing condition attached as Appendix B to Report PED24175(a).

Analysis

Section 41 of the *Planning Act* allows municipalities to require Site Plan Control approval within a Site Plan Control area and Bill 185 introduced new provisions that allow site plan approvals to lapse if a building permit is not issued within a specified time. The City of Hamilton has a two stage Site Plan Control approval process that includes:

- A “Conditional Approval” stage during which redlined plans are approved and conditions are imposed that must be addressed to the City’s satisfaction before a building permit is issued; and,
- A “Final Approval” stage that occurs after all the conditions required prior to issuance of a building permit are satisfied and final plans are approved to be implemented through construction and completion of on-site works.

Currently, site plan approvals in the City of Hamilton (Conditional Site Plan Approval and Final Site Plan Approval) never expire. The City had previously provided for the lapsing of site plan approvals (see Report FCS20028 / PED20105), but this was challenged at the Ontario Land Tribunal (OLT) on the basis that it resulted in higher Development Charges being collected upon submission of a new Site Plan Control application and was not provided for in the *Planning Act*. Bill 185 now allows municipalities to lapse / expire site plan approvals as a tool to address “stalled” developments that can limit progress on provincial housing targets.

The introduction of lapsing provisions will also address administrative challenges associated with the processing of site plan applications, including (see Appendix A to Report PED24175(a)):

- Developments that have received Conditional Site Plan approval are considered when forecasting and planning for infrastructure capacity. A site plan that remains active but is not moving forward has been allocated planned

infrastructure capacity that could be allocated to developments that are more likely to be built.

- For site plan applications that remain active for long periods of time, there is a risk that City policies and procedures change, and an approved development no longer aligns with the City's vision and planning framework for a site.

Consultation with the Development Industry identified concerns with the financial implications of introducing lapsing provisions. Some developers who submitted applications after January 1, 2020, expressed that the introduction of lapsing provisions is unfair because they had been making decisions based on the development charges being locked-in and are already experiencing development feasibility challenges due to current market conditions. It was also noted that delays addressing site plan conditions and obtaining final site plan approval are sometimes due to external factors that are outside of the developer's control (for example Provincial approval processes or City delays installing required infrastructure).

In response to consultation with the Development Industry, staff are recommending the following modifications to the lapsing provisions that were presented at the October 18, 2024, Planning Committee:

- Two one-year extensions to Conditional Site Plan Approval instead of one, subject to criteria;
- Extension criteria for cases where the applicant is unable to get clearance on a condition needed to be cleared by an outside agency;
- Extension criteria for cases where the applicant is unable to clear a condition due to delays in the completion of City infrastructure projects; and,
- For site plan applications submitted between January 1, 2020 and the date of the passing of the new Site Plan Control By-law, Conditional Site Plan Approval will lapse six years from the date of the issuance of the Conditional Approval Letter.

Some developers also requested that the City allow for the phasing of site plan conditions for multi-building developments in Downtown Hamilton. This would allow developers to clear conditions and obtain building permits for individual buildings / phases while maintaining one site plan approval and development charge lock-in date for the entire development. The ability to phase site plan conditions had been removed from the site plan process in the Downtown Hamilton Community Improvement Plan Area in 2020 in response to previous Provincial legislative changes (see Report FCS20028 / PED20105).

The ability to phase site plan conditions has continued for all other areas of the City outside of the Downtown Hamilton Community Improvement Area. Staff support re-introducing the phasing condition for Downtown site plan applications to help facilitate development and note that each phase would still need to proceed within the lapsing timelines for the development charge lock-in to apply (see Appendix B to Report PED24175(a)).

Alternatives

It is not mandatory that municipalities implement the “use it or lose it” lapsing provisions introduced by Bill 185. However, in the City’s submission to the Province on Bill 185, Council supported the “use it or lose it” concept. Should Council decide not to approve the recommended site plan lapsing provisions, Conditional Site Plan approvals in the City of Hamilton will continue to not expire. Council may also approve a longer time period before Conditional Site Plan Approval will lapse but cannot implement a time period that is shorter than three years. A longer time period is not recommended by staff because the recommended time periods have been developed to address the concerns of the Development Industry while providing an incentive to developers to implement their approvals in a timely manner and only lock in development charge rates for applications that have not lapsed.

Relationship to Council Strategic Priorities

3. Responsiveness & Transparency
 - 3.1. Prioritize customer service and proactive communication
 - 3.2. Get more people involved in decision making and problem solving

Previous Reports Submitted

- [Implementation of Changes to Section 41 of the Planning Act - Site Plan Approval, in Response to Provincial Bill 185 \(PED24175\) \(City Wide\)](#)
- [City of Hamilton’s Response to the proposed Planning Act and Municipal Act changes in Provincial Bill 185, Cutting Red Tape to Build More Homes Act, 2024 \(PED24097\) \(City Wide\)](#)
- [Bill 185, Cutting Red Tape to Build More Homes Act, 2024 as it Relates to the Development Charges Act, 1997 \(FCS24034\) \(City Wide\)](#)
- [Development Charges Interest Rate Recommendation Related to Bill 108 Changes and Related Site Plan Changes \(FCS20028 / PED20105\) \(City Wide\)](#)

Consultation

- Patrick MacDonald, Deputy City Solicitor, Corporate Services
- Alexandra Di Domenico, Senior Financial Analyst, Corporate Services
- Binu Korah, Director – Development Engineering, Growth Management Division

Appendices and Schedules Attached

Appendix A: Draft By-law to Amend Site Plan Control By-law No. 24-186

Appendix B: Phasing Condition to be Added to the Standard Conditions of Approval for Site Plans in the Downtown Community Improvement Area

**Implementation of Changes to Section 41 of the *Planning Act* – Site Plan
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