



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 16, 2016
SUBJECT/REPORT NO:	Improving Planning Application Review (CI-15-E) (PED16040) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Melanie Pham Planner (905) 546-2424 Ext. 6685 Steve Robichaud Director of Planning and Chief Planner
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- a) That approval be given to Official Plan Amendments:
 - i) No. XX to the Urban Hamilton Official Plan (Appendix “A” to Report PED16040) to:
 - 1) Clarify the circumstances where the City may waive or accept less than the maximum road widening and / or the daylighting triangle requirement established in the Urban Hamilton Official Plan in Section C.4.5.2 or Schedule C-2 – Future Road Widening;
 - 2) Amend Section F.1.19 (Complete Application Requirements and Formal Consultation) to add “Community Consultation”, “Design Review Panel Advice” and “Right of Way Impact Assessment”;
 - 3) Amend Section F.3.2 (Council Adopted Guidelines and Technical Studies) to add implementation requirements for Community Consultation and Right of Way Impact Assessments; and,

- 4) Make administrative changes to correct errors to policy references and policy numbering; and,
- ii) No. XX to the Rural Hamilton Official Plan (Appendix “B” to Report PED16040), to:
 - 1) Clarify the circumstances where the City may waive or accept less than the maximum road widening and / or the daylighting triangle requirement established in the Urban Hamilton Official Plan in Section C.4.5.2 or Schedule C-1 – Future Road Widening (Rural);
 - 2) Amend Section F.1.9 (Complete Application Requirements and Formal Consultation) to add “Community Consultation”, “Design Review Panel Advice” and “Right of Way Impact Assessment”;
 - 3) Amend Section F.3.2 (Council Adopted Guidelines and Technical Studies) to add implementation requirements for Community Consultation and Right of Way Impact Assessments; and,
 - 4) Make administrative changes to correct errors to policy references and numbering; and,
- b) That Council approve the following Guidelines and authorize the Chief Planner to make minor changes as required:
 - i) “Guidelines for the Preparation of a Planning Justification Report” as set out in Appendix “C” to Report PED16040;
 - ii) “Guidelines for Community Consultation” as set out in Appendix “D” to Report PED16040; and,
 - iii) “Guidelines for Minor Developments Exempt from Road Widening” as set out in Appendix “E” to Report PED16040.

EXECUTIVE SUMMARY

As a matter of best practice, staff are dedicated to continuously reviewing our current practices, processes and policies to identify improvements and ensure that the delivery of planning services responds to the needs of the Division’s customers and stakeholders. This practice aligns with City of Hamilton’s Open for Business mandate to create consistent, predictable, and customer-focused services that encourage investment.

The purpose of this Report is to recommend the following:

- That the policies regarding exemptions or reductions in road widenings be amended to provide additional clarity and a consistent standard of review for applicants and staff;
- That certain types of minor development be exempted from providing road widenings;
- That the City be permitted to request three additional types of materials with the submission of a complete application to ensure a comprehensive review; Community Consultation, advice from the Design Review Panel, and a Right of Way Impact Assessment; and,
- That Council endorse guidelines for Planning Justification Reports, Community Consultation Meetings and Minor Developments Exempt from Road Widenings, to assist applicants in understanding the City's requirements and expectations.

The changes to the "Road Widening" policies and the guidelines for minor developments exempt from road widenings will provide clearer direction for City staff and proponents regarding situations where a reduction in road widening requirements from the stated width in the Official Plan can be considered.

The addition of "Community Consultation", "Design Review Panel Advice" and "Right of Way Impact Assessment" to the list of items that can be requested as part of a complete application, and the adoption of guidelines for Planning Justification Reports and Community Consultation Meetings will provide more clarity for proponents preparing an application, and ensure that the City has sufficient information to appropriately review applications. The addition of "Community Consultation" as a potential complete application requirement also serves to enhance our public engagement process for significant development applications.

Alternatives for Consideration – See Page 21

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Where road widening requirements are reduced or waived for a development application, there is a potential cost involved if the City needs to obtain this widening at a later date. In greenfield situations with vacant land, the cost of purchasing a piece of land is generally limited to the market value of the land, but in areas which are fully urbanized, compensation must be provided for moving features such as fences, landscaping, lighting, etc, in addition to paying the market value of the lands. It is estimated that the average cost for a road widening purchase by the City is approximately \$35,000. However, City costs can range from approximately \$15,000 to over \$100,000 depending on the site, the size of the widening and if any mitigation measures are required (e.g. relocation of landscape features, fencing, etc.).

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Staffing: There are no staffing implications.

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for an Official Plan Amendment.

HISTORICAL BACKGROUND

Formal Consultation and Complete Application Requirements

Amendments to the *Planning Act* in 2007, via Bill 51 – *The Planning and Conservation Land Statute Law Amendment Act*, enabled the City to require applicants to consult with the City prior to submission of development applications for Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan. Additionally, prior to deeming applications complete, municipalities became able to request additional information or material that Council considers it may need to assess an application, but only if the Official Plan contains provisions describing the information and material.

In 2008, Council adopted Official Plan Amendments, a Formal Consultation By-law, and Amendments to the Site Plan Control By-law, which established policies requiring formal consultation and established submission requirements for complete *Planning Act* Applications (By-laws 08-296, 08-297 and 08-298).

The requirement for formal consultation prior to the submission of a planning application provides the City with an opportunity to review potential development proposals, identify key issues and determine the information and materials required to assess an application and to deem such applications complete. The policies benefit both applicants and the City, as they ensure that an applicant is aware of the required supporting information before an application is submitted, and ensure that the City has the necessary information to make informed decisions on an application.

The approved amendments to the Official Plan also directed that guidelines should be prepared to provide direction on the content and scope of information and materials required for a complete application. This direction is important because the quality of submissions can vary greatly. The policies of the Official Plans permit an application to be deemed incomplete if it does not meet the standard of an adopted guideline.

Design Review Panel

In August 2013, Planning Committee approved a recommendation to establish a two year pilot Design Review Panel (DRP) starting January 1, 2014. The DRP's general mandate is to review complex applications in key areas of the City, such as the Downtown and the West Harbour (Setting Sail) Secondary Plan area. The DRP provides professional, objective advice to planning staff on matters of design that affect the design of proposed buildings and the public realm, including streets, parks, and open spaces, in order to help achieve and uphold standards of design excellence. This

input is integrated into the development approvals process to provide objective advice to City staff and Council.

As of December 2015, the Design Review Panel has reviewed and provided comments on 14 development applications and on four studies being completed by the City (Barton-Tiffany Urban Design Study, James Street Mobility Hub Study, Downtown Tall Buildings Study and the Scott Park Precinct Design for the Bernie Morelli Recreation Centre and North Secondary School).

Public Participation and Mediation in the Planning Approval Process

In 2003, Council adopted a set of procedures for communication and involvement with the public relative to applications for Official Plan Amendments, Zoning By-law Amendments and Plans of Subdivision (Report PD03105 - Public Participation and Mediation in the Planning Approval Process). These procedures introduced changes to the planning approval process by providing opportunity for enhanced public participation, and identification, collaboration and resolution of issues, prior to the Department preparing the staff report for Committee and Council. The purpose of the changes was to make the process more 'front-ended' and provide Committee / Council with the potential for more community based decision-making. Updates were made to the procedures in 2007. These updates included improvements in the manner in which correspondence and comments regarding an application are provided to Ward Councillors, and included allowing an optional neighbourhood meeting to be held prior to a formal public meeting where the Manager of Development Planning, Heritage and Design and the Ward Councillor determine it would be beneficial to address public issues raised in response to the preliminary circulation letter prior to consideration of the matter by Planning Committee.

The adopted set of procedures also permit applicants to hold a community meeting prior to an application submission, as an alternative to the City sending out a letter to the surrounding area about an application after submission requesting written comments (preliminary circulation letter). This meeting / consultation is optional for applicants. With increased infill and redevelopment activity, there are circumstances when public consultation should occur prior to submission of a development application. The proposed Official Plan Amendment to add "Community Consultation" to the list of materials that can be required for a complete application would permit the City to require a Community Consultation meeting before an application is submitted. The proposed guidelines for the Community Consultation requirement, set out in Appendix "D" to Report PED16040 are similar to the meeting procedures adopted in 2003 as part of the "Public Participation and Mediation in the Planning Approval Process" Report.

Planning Committee Motion

On October 1, 2013, a motion was passed at Planning Committee as follows:

“Road Widening (Item 9.3)

That Planning and Public Works staff prepare a report to Planning Committee respecting concerns and issues related to excessive setback and road widening requirements in all the City’s downtowns.” (Report 13-015).

This Report reviews a number of the concerns and issues with road widenings on a City wide basis, and would apply to all of the City’s former downtowns as well. Some of the major concerns regarding road widenings in the former downtowns, such as widening requirements that would impact historical streetscapes, existing buildings or cultural heritage resources, will be addressed through the proposed changes in this Report. Further details are discussed in the analysis on pages 13-16.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Recommendation a) - Road Widenings

Planning Act

The *Planning Act* permits municipalities to require road widenings as a condition of approval for site plan applications, plans of subdivision and consents (land severances) (Subsections 41(7) and (9), 51(25) and 53(12)). A road widening can only be required if it is identified in an official plan as a road to be widened, and the extent of the proposed widening is also identified. A municipality can also require lands to be conveyed for a public transit right of way in the same manner. The proposed Official Plan Amendments are consistent with the *Planning Act* as they provide a description of when the City will take road widenings.

Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP)

The UHOP and RHOP contain a number of policies related to the roads network in Section C.4.5 of Volume 1 (same section in both plans). The road network is planned and implemented according to a series of functional classifications and standard road widths. Planned road widths that differ from the general standard are also detailed in the Official Plan (UHOP: Schedule C-2 – Future Road Widenings, RHOP: Schedule C-1 – Future Road Widenings (Rural)). In many instances, existing road widths are less than the planned future road widths. The planned road widths are achieved by obtaining a road widening or dedication of lands for roadways, which is typically implemented through approval of applications for plan of subdivision, plan of condominium, land severance consent, or site plan (Policy C.4.5.6). It is important to note that the “road widths” referred to in the City’s Official Plan policies refer to the space needed for all streetscape elements and infrastructure, not just the paved lanes

of the road. The widths that are required are needed to provide for things such as underground or aboveground infrastructure and utilities, sidewalks, street trees, bike lanes, bus bays, bus stops and street furniture, all of which are elements of a complete street.

Although the intended future road width for all roads is delineated in the Official Plan, some flexibility in the road width standards is permitted through Policy C.4.5.6.4 of the UHOP, and Policy C.4.5.6.6 in the RHOP, which is similar. The policies are noted below:

“C.4.5.6.4 Notwithstanding Sections C.4.5.6 and C.4.5.7, the City may waive or accept less than the maximum road widening and/or daylighting triangle requirements where, in the opinion of the City, constraints including but not limited to, the nature of existing development, topographic and/or natural features, cultural heritage and design features or other constraints make it impractical to widen the road to the established road allowance requirement.

C.4.5.6.6 Notwithstanding Sections C.4.5.6 and C.4.5.7, the City may waive or accept less lands to be dedicated than the maximum road widening and/or daylighting triangle requirements where, in the opinion of City, constraints including but not limited to, the nature of existing development, topographic and/or natural features, cultural heritage and design features or other constraints make it impractical to widen the road to the established road allowance requirement.”

These two policies allow for consideration of an alternative to the maximum road widening in situations where constraints make it impractical to construct the road to its ultimate planned width. It lists a number of possible constraints, but allows for any other constraints to be considered as well. The RHOP includes an additional policy (below) that outlines certain situations where a conveyance of lands for a future road widening shall not typically be taken.

“C.4.5.6.5 Notwithstanding Policies C.4.5.6.2, C.4.5.6.4 and C.4.6.7:

- a) Where site plan approval is required primarily for the purposes of natural heritage protection and site plan approval is the only Planning Act application, a conveyance of lands for a future road widening or daylight triangle shall not be taken.
- b) Where site plan approval is required for a minor development and the site plan approval is the only Planning Act application, a conveyance of lands for a future road widening or daylight triangle may not be taken at the discretion of the City.”

It is recommended that the policies in both the UHOP (Policy C.4.5.6.4) and the RHOP (Policy C.4.5.6.6) dealing with alternatives to the stated road widths be deleted and replaced with an alternate policy, as outlined below. In addition, staff are recommending that Policy C.4.5.6.5 in the Rural Hamilton Official Plan outlined above be incorporated into the Urban Hamilton Official Plan for a consistent approach between both the Urban and Rural areas, as these types of applications dealing with natural heritage protection and various types of minor applications are also applicable in the Urban Area. An analysis and rationale for the changes is discussed on pages 12-18.

Proposed full policy for UHOP and RHOP:

“C.4.5.6.4 Notwithstanding Policies C.4.5.6, C.4.5.6.1, C.4.5.6.3 and C.4.5.7:

- a) Where site plan approval is required primarily for the purposes of natural heritage protection and site plan approval is the only *Planning Act* application, a conveyance of lands for a future road widening or daylight triangle shall not be taken.
- b) Where site plan approval is required for a minor development and the site plan approval is the only *Planning Act* application, a conveyance of lands for a future road widening or daylight triangle may not be taken at the discretion of the City.

C.4.5.6.5 Notwithstanding Policies C.4.5.6, C.4.5.6.1, C.4.5.6.3 and C.4.5.7, and in addition to Policy C.4.5.3, the City may waive or accept less lands to be dedicated than the maximum road widening and/or daylighting triangle requirements where, in the opinion of the City:

- a) It is determined through a development planning approval process that due to significant adverse impacts on:
 - i) existing built form,
 - ii) natural heritage features,
 - iii) an existing streetscape; or
 - iv) a known *cultural heritage resource*;

it is not feasible or desirable to widen an existing road allowance to the maximum road widening or provide the full daylight triangle as set out in Section C.4.5.2, Schedule C-2 – Future Road Widening or Section C.4.5.7, and that the City’s objectives for sustainable *infrastructure*, complete streets and mobility can be achieved, or,

- b) An alternative road width or daylight triangle size has been deemed appropriate through a City initiated environmental assessment, streetscape master plan, area master plan, secondary planning

study, or other transportation or planning study approved by Council, and provided it does not affect the safe and planned operation of the roadway.

C.4.5.6.6 Where a right-of-way width less than the maximum road allowance or a reduced daylight triangle is established in accordance with Policy C.4.5.6.5, the City may require the establishment of an easement for the installation and maintenance of municipal *infrastructure*.”

The proposed policies meet the objectives of the Official Plan to continue to obtain appropriate road widths through development application approvals, while allowing some flexibility to recognize that sometimes it is not feasible to obtain the maximum road width, or that sometimes it is appropriate to permit a lesser width to meet other objectives of the Plans, such as the protection of our natural heritage or cultural heritage resources. This need for some flexibility has already been recognized in the policies of several approved secondary plans, including the Downtown Secondary Plan and the Strathcona Secondary Plan. Therefore, the proposed policies are in keeping with the general intent of the Urban Hamilton Official Plan and Rural Hamilton Official Plan.

Recommendation a) - Complete Application Requirements

Planning Act

The *Planning Act* permits a municipality to require any information or materials that it needs for applications for Official Plan Amendments, Zoning By-laws and Plans of Subdivision, but only if the Official Plan contains provisions relating to these materials (Subsections 22(5), 34 (10.2) and 51(18)). Complete application requirements are determined through the “Formal Consultation” process. The *Planning Act* permits the City to require formal consultations for Official Plan Amendments, Zoning By-laws, Plans of Subdivision and Site Plans (Subsections 22(3.1), 34(10.0.1), 51(16.1) and 41(3.1)).

Municipalities must follow the minimum requirements of the *Planning Act* for providing notice of an application, and for holding a statutory public meeting. The *Planning Act* does not prohibit municipalities from establishing additional public consultation requirements for development applications that exceed the minimum requirements.

The proposed Official Plan Amendments are consistent with the *Planning Act*. They will add three items to the list of materials that the City can request as part of a complete development application, to ensure that the City has all the materials that it needs to appropriately consider an application.

Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP):

The UHOP (Policy F.1.19.6, Table F.1.19.1 of Volume 1) and the RHOP (Policy F.1.9.7, Table F.1.9.1 of Volume 1) identify as part of their Complete Application Requirements a list of information and materials which may be required to deem a development application complete. These requirements apply to applications for Official Plan Amendment, Zoning By-law Amendment, Draft Plan of Subdivision and Site Plan, and can include various types of studies, plans and reports (e.g, Transportation Impact Studies, Urban Design Reports, Noise Studies, etc.).

The purpose of allowing the City to request these additional materials is to ensure that staff are able to complete a comprehensive review of an application. Adding “Community Consultation”, “Design Review Panel Advice” and “Right of Way Impact Assessment” to this table, as potential information requirements for a complete application, will assist in achieving this comprehensive review.

The Official Plans also describe and provide guidance on a number of the studies or materials that are sometimes required with applications in Section F.3.2 – Council Adopted Guidelines and Technical Studies. The proposed Official Plan amendments will add several policies to this section which provide direction for Right of Way Impact Assessments and for applying the Community Consultation Guidelines. These policies provide guidance which will assist in the implementation of the City’s Complete Application Requirements.

These changes are consistent with the intent and purpose of the City’s Complete Application Requirements in the UHOP and the RHOP.

Recommendation (b) - Guidelines

Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP):

As part of the complete application requirements in the UHOP and the RHOP, Policy F.1.19.9 of Volume 1 and Policy F.1.9.10 of Volume 1, respectively, direct that:

“The City shall establish guidelines for the other information and materials identified in Policy F.19.6, to provide direction regarding the intended content and scope of such other information and materials.”

Basic requirements for some types of technical studies are found in Section F.3.2 of Volume 1 in both the UHOP and the RHOP. More detailed guidelines that outline specific requirements and technical standards are more appropriate to be developed as separate documents, as directed in the policy noted above. The guidelines proposed for Planning Justification Reports and Community Consultation implement the direction to establish guidelines for materials requested with the submission of development applications.

Therefore, the proposed Official Plan Amendments in recommendation a) (Appendices “A” and “B” to Report PED16040) are consistent with the general intent and purpose of the Urban Hamilton and Rural Hamilton Official Plans to allow exceptions to providing the maximum road widening when there are appropriate circumstances, and to ensure that necessary information and materials can be requested with the submission of an application. The proposed guidelines in recommendation b) (Appendices “C” and “D” to Report PED16040) are also in conformity with the policies of the Urban Hamilton and Rural Hamilton Official Plans, as they fulfil the direction of the Official Plans.

RELEVANT CONSULTATION

Notice of the proposed Official Plan Amendments in Recommendation (a) was given by newspaper notice on Friday, January 29 in accordance with the requirements of the *Planning Act* and the City’s Official Plan. The notice also included information about Recommendation (b).

The proposed Official Plan Amendments were circulated internally to staff in the Planning Division of the Planning and Economic Development Department, to the Public Works Department, and to Legal Services. The Hamilton Halton Home Builders’ Association (HHHBA) was consulted and the Development Industry Liaison Group (DILG) was also notified that amendments to the Official Plan regarding road widenings and complete application requirements were being considered.

The draft Guidelines for Planning Justification Reports were circulated internally to staff in the Planning Division, and were also circulated to 15 external Planning Consultant firms which frequently prepare these types of reports for applications with the City. In addition to the Guidelines, the circulation included a brief description of the proposed Official Plan Amendments regarding road widenings and complete application requirements. Four letters were received and are included in Appendix “G” to Report PED16040.

The comments in general are supportive of the proposed Guidelines for Planning Justification Reports. A request was made by the Canadian Association of Certified Planning Technicians to also allow Certified Planning Technicians to be eligible to prepare Planning Justification Reports. These professionals receive a significant education in the field of planning and have been recognized previously by the Ontario Municipal Board (OMB) as being qualified to give evidence on planning matters. This is consistent with the City’s practice of having Planning Technicians give planning evidence at the OMB on planning matters. As such the guidelines for Planning Justification Reports have been amended to permit both Registered Professional Planners (RPP) and / or Certified Planning Technicians (CPT) to prepare reports.

Another comment provided an opinion that the City’s Formal Consultation process should identify the relevant and appropriate policies to be considered in a Planning Justification Report if the Guidelines are to be adopted. This would assist applicants in

ensuring they have addressed all necessary policies in their reports. Staff note that as part of the Formal Consultation process, applicable policy documents are identified, as well as applicable land use designations within those documents (e.g., within the Official Plan, Secondary Plans, and Neighbourhood Plans). The Community Planning Section of the Planning Division typically also provides detailed comments regarding applicable Secondary Plan policies and Neighbourhood Plan policies as part of a Formal Consultation. However, based on the preliminary nature of Formal Consultations, it is not possible for staff to do a comprehensive review identifying all applicable policies from the City's Official Plan prior to a full application being submitted. Therefore, staff are of the opinion that the current level of information provided to applicants through Formal Consultation is sufficient. Furthermore, it is not uncommon for staff to meet with proponents to review and discuss Official Plan policies and designations for the purpose of providing clarification and determining applicability of Official Plan policies. A policy and planning analysis is somewhat subjective in nature, and there may be different professional opinions on whether or not a proposal complies with or complements Official Plan policy. A report would not be deemed unsatisfactory on the basis of a professional opinion that may differ from a staff member's professional opinion.

It was noted that some appendices such as draft Official Plan Amendments and Zoning By-laws potentially may not be needed as part of a Planning Justification Report as these are often not used by the City. However, based on staff experience, this is not felt to be accurate. Although staff prepare a new Official Plan Amendment or Zoning By-law Amendment document for final reports, staff do use the drafts provided by applicants as part of their initial review of an application, and for circulation to other staff departments and agencies for comment.

Another comment was expressed that applications for site plan or plans of subdivision which do not involve Official Plan or Zoning By-law changes should not require a Planning Justification Report or Brief. Staff notes that for subdivision applications, a report or brief is usually required, to demonstrate how the application is meeting the criteria for subdivisions outlined in Section 51(24) of the *Planning Act*. A report or brief is not usually requested for site plans, but may be needed for variance applications related to a site plan.

Two letters commented on the other items discussed in the report, namely the proposed official plan amendments regarding road widening policies and complete application policies. More information was requested as detailed policies were not included in the circulation. Both respondents have been provided a full copy of this staff report and have been notified of the Public Meeting for this Report in response to these requests. There is general support for making changes to Road Widening policies which would have the effect of clarifying requirements, providing a more consistent standard of review, and exempting minor developments. With regards to the additional complete application requirements, it was suggested that "Advice from the Design Review Panel" be revised to state "Comments from the Design Review Panel". However, based on the DRP mandate, the purpose of the DRP is "to give advice and make recommendations

to staff” regarding urban design. Based on this wording, the term “Advice” is the most accurate description and has been maintained.

Several questions were noted pertaining to the requirements for and nature of “Right of Way Impact Assessment” and “Community Consultation”, as detailed information on these materials was not provided in the circulation. Further details are contained on page 18 of the Report and within Appendix “D” to Report PED16040, respectively.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The purpose of this Report is to recommend the following:

- That the policies regarding exemptions or reductions in road widenings be amended to provide additional clarity and a consistent standard of review for applicants and staff;
- That certain types of minor applications be automatically exempted from providing road widenings;
- That the City be permitted to request three additional types of materials with the submission of a complete application to ensure a comprehensive review; Community Consultation, advice from the Design Review Panel, and a Right of Way Impact Assessment; and,
- That Council endorse guidelines for Planning Justification Reports, Community Consultation meetings and Minor Developments Exempt from Road Widenings, to assist applicants in understanding the City’s requirements and expectations.

These improvements will provide clarity for the Division’s customers and stakeholders, and will assist staff in reviewing and processing applications. This aligns with the City of Hamilton’s Open for Business mandate to create consistent, predictable, and customer-focused services that encourage investment.

Recommendation a) – Road Widening Policy Amendments

The Official Plan sets out maximum widths for road rights-of-way for each type of road throughout the City to achieve complete streets and allow for the efficient operation of the road network. In accordance with the *Planning Act*, a road widening can be requested as a condition of approval of a site plan, plan of subdivision or consent (land severance) application.

The required road widths in both Official Plans are based on a variety of sources, including the City’s Transportation Master Plan, as well as the more detailed Transportation Studies, Environmental Assessments and Secondary Plans that have been completed for specific areas of the City. These processes have determined the optimum road widths for the City’s road network, which have been identified and incorporated into the Official Plans.

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As noted in the Policy Implications Section of the report, there is a policy in both Official Plans which permits the City to waive or accept less than the maximum road widening and / or daylighting triangle requirements where, in the opinion of the City, various constraints make it impractical to widen the road to the established road allowance requirement. For site plan applications, through which road widenings are obtained, this determination is made by the Manager of Development Planning, Heritage and Design based on the detailed review of an application for development and the advice of both Growth Management and Public Works staff.

In the past, Council has recognized that in some situations or locations, when trying to balance different objectives, exemptions from providing a road widening or permitting an alternative requirement may be appropriate. Council of the former Region of Hamilton-Wentworth approved changes to the Region's "Road Widening Policy" in 1995 (See Appendix "F" to Report PED16040) that waived road widening dedications for site plan approvals for additions to existing buildings, if the increase in gross floor area was less than 30% of the existing building's gross floor area. Negotiation of a specific widening on a case-by-case basis was permitted for some other developments as well.

There are situations where a proponent asks that staff consider a different standard or to exempt a project from a road widening. Staff are also frequently asked to identify exactly what a specific widening for a specific property will be used for. This information is not always available because there may not be a specific project being planned for a road that requires extra land immediately. However, to plan for the long term, these road widenings are ultimately needed. This back-and-forth discussion to negotiate alternate standards on a case-by-case basis results in inconsistencies in the considerations used to determine alternate widenings.

Although sometimes negotiations for specific cases may be unavoidable, the proposed policies are intended to provide clearer direction on the criteria that can be considered for waiving road widening or daylight triangle requirements, or allowing an alternate requirement. In some cases waiving or providing an alternate road widening requirement may be appropriate. However, there needs to be some clear criteria to use when reviewing these situations.

Staff propose that a reduction or waiving of a requirement only be permitted where there is a demonstrated significant adverse impact relating to the four criteria listed below, or where Council has approved a City initiated study, such as an environmental assessment or streetscape master plan, which has studied a specific area in greater detail and indicates that a different standard than what is in the Official Plan can / should be applied.

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Staff recommends that the demonstration of significant adverse impacts be limited to four criteria:

1) Impacts on existing built form.

Impacts may include circumstances where an existing building is located within a required road widening. Providing the widening through the existing building would be considered a significant adverse impact.

2) Impacts on an existing streetscape.

An example of this is if most buildings on an existing street have a similar setback and provide a continuous streetscape, and a new development on the same street is required to have a much greater setback from the actual street, due to a large road widening. The widening would create a significant adverse impact on the streetscape character.

3) Impacts on the natural heritage system.

Impacts may include circumstances where a site design that is created to accommodate a full road widening would result in adverse impacts on a feature of the natural heritage system, such as a watercourse, wetland, or woodlot.

4) Impacts on a cultural heritage resource.

Impacts may include circumstances where providing a road widening on a heritage property or an adjacent property, might impact some of the features that are protected by the heritage designation, such as fencing, gates, or a specific landscape.

The amendments will permit the City additional flexibility to take into consideration both feasibility and desirability when determining appropriate road widenings, as well as ensuring that in appropriate cases, the required road widening will continue to be applied. In addition, Council direction provided through the approval of other more detailed studies for specific roads or areas is also recognized. These changes are desirable and consistent with good planning.

In addition to the proposed criteria, the existing policies in the RHOP list two types of applications where a road widening requirement would not normally be applied. These include site plan applications that deal only with natural heritage protection and site plan applications for minor developments. The policy permits the City to exempt minor developments from the road widening requirement, but still maintains the right of the City to take these widenings if necessary, whereas applications that deal with only natural heritage protection are always exempt. Development applications where only natural heritage protection is reviewed are typically developments such as decks or in-

ground pools for residential dwellings abutting woodlots, wetlands or other significant environmental areas.

This policy was added to the RHOP, along with a large number of other general policies, through Official Plan Amendment No. 5 in November 2013. The UHOP was adopted in 2009 and approved in August 2013 prior to RHOP Amendment No. 5, and therefore does not include this policy. Staff recommend that this policy be added to the UHOP for consistency, as these types of applications also occur in the urban area. Staff feel that these types of minor developments should not be subject to road widening requirements in most cases because of their minor nature. Applying this requirement would create a much more complex process for these applicants, and a significant increased cost to obtain approvals. However, if a road widening is absolutely necessary due to an imminent project that needs the land (e.g., along a rapid transit corridor), the policy provides the City discretion to require a road widening even for minor developments.

Staff have also proposed that a policy be added to both Official Plans that allows for the City to request an easement instead of a road widening. This policy ensures that the City can still accommodate any necessary infrastructure in locations where a full road widening has not been obtained. Utility providers would be required to negotiate directly with landowners to permit utilities within an easement.

As part of staff's review of the policies regarding road widenings, three technical errors in the RHOP and two in the UHOP were identified and will be corrected through the proposed amendment (Recommendations a)i)4) and a)ii)4)). Errors in the RHOP include a numbering error (Policy number C.4.5.6.4 is missing from the list of policies in Section C.4.5.6, and subsequent policy numbering is incorrect as a result), and a correction to the policy references in Policies C.4.5.6.3c) and C.4.5.6.5 which reference incorrect policy numbers. In the UHOP, Policy C.4.5.6.1 is worded to contain two policies, and therefore needs to be separated to be given two policy numbers. Policy C.4.5.6.3c) also references incorrect policy numbers.

To ensure that requests to reduce or waive a road widening requirement are appropriately reviewed and address the criteria for allowing reductions outlined in the proposed Official Plan amendments, staff recommend that a "Right of Way Impact Assessment" be added to the Complete Application Policies to provide a framework for assessing requests for reduced road widenings.

Recommendation a) – Complete Application Policy Amendments

As noted in the Policy Implications Section of the report, the *Planning Act* permits municipalities to require applicants to formally consult with the municipality before submitting applications for Official Plan Amendment, Zoning By-law Amendment, Subdivision or Site Plan application. Municipalities are also permitted by the Planning

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Act to require any other information and materials that are deemed necessary to complete a review of an application before an application is deemed complete and accepted.

Based on this authority, the City established requirements for Formal Consultation and Complete Applications in 2008. These requirements were carried forward in the City's Urban Hamilton Official Plan (UHOP) (Volume 1, Chapter F, Section 1.19) and Rural Hamilton Official Plan (RHOP) (Volume 1, Chapter F, Section 1.9). Each of these sections include a table listing all types of plans, studies and reports that can be requested from an applicant with the submission of an application. Three additional items are recommended to be added to this list, Community Consultation, Advice from the Design Review Panel and a Right of Way Impact Assessment. Policies are also proposed for Section F.3.2 – Council Adopted Guidelines and Technical Studies to provide guidance which will assist in the implementation of the new requirements.

a) Community Consultation

The current Council approved Public Participation Policy allows for a proponent to initiate a community information meeting before an application for Official Plan Amendment, Zoning By-law Amendment or Plan of Subdivision is submitted, but does not require it. The policies state who the proponent should invite and the information that needs to be recorded at the meeting (e.g., minutes, invitation list, comment sheets). At the discretion of the Manager of Development Planning, Heritage and Design, this meeting can be used as an alternate method of consultation with the public instead of the preliminary circulation letter normally sent out. However, this method of consultation is rarely used by proponents. To encourage proponents to consult at the “front end” of the process, staff recommend that approval be given to add “Community Consultation” as a potential requirement for a complete application. This requirement will improve public engagement by allowing for early issue identification and providing the opportunity for the applicant to reverse and / or modify a proposal based on community feedback prior to formal submission of the application(s). This type of meeting requirement would be requested for major applications, such as Official Plan Amendments or other major transformational projects. It will permit staff to more effectively implement Council's policy regarding consultation with the community whenever it is deemed to be beneficial, instead of permitting it at the discretion of an applicant.

Since the Formal Consultation requirements have been established, staff are now aware of major and potentially controversial applications that might be submitted in the future. There have been some cases, since the formal consultation process was established, where staff identify that a project may benefit from a neighbourhood meeting before an application is submitted. However, staff do not have the authority to require an applicant to hold a meeting. In the past, applicants

have sometimes been asked to hold a neighbourhood information meeting, or the Ward Councillor will arrange a meeting for major applications. However, this meeting typically occurs after an application has been submitted, and typically because of a large number of public comments submitted in response to the preliminary circulation of an application.

There are several important advantages to being able to require community consultation prior to an application submission, including:

- It provides more up front consultation, in the area where the proposal is located, making the process more open and accessible; and,
- It provides an opportunity for the proponent to explain the project before residents / owners in a neighbourhood receive a formal notice.

As noted, the intent is that this requirement would only be applied to major applications, where the Manager of Development Planning, Heritage and Design, in consultation with the Ward Councillor, determine that a consultation with the community would be beneficial.

b) Advice from Design Review Panel (DRP)

The purpose of DRP is to provide expert impartial design advice and guidance to planning authorities on significant development proposals and other design related matters, based on established Council-approved policies and guidelines. DRPs provide professional, objective advice to planning staff on matters of design that affect the public realm, including the design of proposed buildings, streets, parks, and open spaces, in order to help achieve and uphold standards of design excellence. DRPs make an important contribution to the development approvals process. Input from the DRP is integrated into the development approvals process to provide objective advice to City staff and Council involved in planning approvals.

Currently, staff can request that an applicant have their proposal reviewed by the DRP. Normally this review is done prior to submitting a formal application so that input from DRP can be integrated into the proposal. However, there is no requirement in the City's Official Plan that this must be done in order for an application to be deemed complete. Since the Design Review Panel has been established, a number of proposals have been reviewed. However, there have been some cases where applicants have declined the staff advice that the DRP should be consulted. Staff do not have the authority to deem an application incomplete in these cases, even if the advice and guidance of the DRP is important for improving and enhancing the proposal. Staff can have the DRP review an application after it is submitted, without an applicant's participation. However, this feedback at a later stage of the process is less constructive, especially if the applicant does not participate. As such, staff recommend that

advice from the Design Review Panel be included in the list of materials that can be requested as part of a complete application.

c) Right of Way Impact Assessment

A “Right of Way Impact Assessment” is recommended to be added to the materials that can be requested as part of a complete application, to assist staff in reviewing requests to reduce or waive a required road widening. Where the impacts of providing a reduced road widening are not clear, this amendment would permit staff to request that an applicant do a review of the various impacts of providing a road widening before a decision is made. This assessment would review impacts to any combination of the four criteria in the Official Plan policy; built form, the streetscape, cultural heritage or natural heritage resources, providing a discussion of various alternatives and a planning rationale for providing the exemption from the road widening requirement. This information will assist staff in making an informed decision on whether an alternate requirement is justified on a planning basis.

Recommendation (b) – Guidelines for Studies and Reports

Staff are also recommending that Council formally endorse a set of Guidelines for the preparation of Planning Justification Reports, for Community Consultation Meetings and for Minor Developments Exempt from Road Widening (Appendices “C”, “D” and “E” to Report PED16040, respectively).

The Official Plan identifies a list of other information and/or materials which can be requested with an application. Policies F.1.19.7c) (UHOP) and F.1.9.8c) (RHOP) note that the “City may refuse other information and materials submitted as part of a complete application(s) if it considers the quality of the submission unsatisfactory. Further to this policy, Policies F.1.19.9 (UHOP) and F.1.9.10 (RHOP) state that “the City shall establish guidelines for the other information and materials, to provide direction regarding the intended content and scope of such other information and materials.” The City’s Official Plans have a number of existing policies regarding Council adopted Guidelines and Technical Studies in Section F.3.2 of the UHOP and RHOP that provide general direction for the content of some studies. Informal documents providing guidance on some of the materials listed (e.g., Urban Design Report Terms of Reference, Cultural Heritage Impact Assessment Infosheet) have also been created to assist applicants with understanding the City’s information needs, if a formal guideline has not been approved yet. For some items, such as the preparation of an Environmental Impact Statement, a proponent will consult with staff to obtain pre-approval of a Terms of Reference before completing a study to allow the study contents to be scoped to address the specific characteristics of an area. However, the majority of items do not have formal guidelines for preparation of these materials, resulting in a wide variety of submissions with varying quality. Formal guidelines are necessary in

order to provide more clarity for applicants on the City's expectations, and to ensure that reports contain the information that is needed to properly review and evaluate an application.

To develop the Guidelines for Planning Justification Reports, staff reviewed a large number of existing reports that had been submitted with various applications. Development Planning, Heritage and Design staff were also consulted to determine their information needs and the areas where reports were most often deficient in information. In addition, a variety of industry consultants were also given the opportunity to review the draft guidelines and provide comments (See Relevant Consultation). The guidelines were developed based on this research and are intended to be flexible. Specific information needs can be discussed with an applicant through the formal consultation process.

The Community Consultation Guidelines reflect the requirements for Community Consultation Meetings that are outlined in the policies of "Report PD03105 - Public Participation and Mediation in the Planning Approval Process". In accordance with these policies, normally, part of the procedure for notifying the public of an application includes a requirement for a letter to be circulated to all property owners within 120 metres of the applicant's property, explaining the nature and effect of the application and the proposed development, with a request to advise staff of any concerns or comments within three weeks (preliminary circulation letter). Applicants are permitted, as an alternative to the preliminary circulation letter, to hold a community consultation meeting prior to the submission of their application. A number of requirements for this meeting are stipulated, including who must be invited, that comment cards must be provided at the meeting, and that minutes of the meeting must be taken. The list of invitees, completed comment cards and meeting minutes must be submitted with the application.

The intent is to adopt a similar set of submission requirements as a Guideline, to apply if the applicant is holding a Community Consultation meeting to fulfill a requirement for a complete application. In addition to the same submission requirements, proponents would also need to submit to the City:

- A copy of the materials presented at the meeting;
- A written summary of all of the comments received verbally and in writing; and,
- A description of any modifications made to the proposal as a result of the meeting.

The guideline for what is considered a "minor development" provides further clarification on the Official Plan policy in the RHOP, which is proposed to be added to the UHOP as well, which allows the City to exempt "minor developments" from providing road widenings where a Site Plan approval is the only *Planning Act* approval required. Developments which would be considered minor would include applications processed with the Minor Site Plan application form and fee, and applications for additions to

existing buildings where the gross floor area of the addition is not more than 30% of the gross floor area of the existing building. Applications processed with the minor application form and fee normally include detached or semi-detached dwellings, additions less than 100m², parking areas of five or less spaces, outdoor patios, or minor structures such as ramps and fire escapes. The 30% cut off for gross floor area increases is a guideline that was applied to developments along Regional Roads in 1995 (See Appendix “E” to Report PED16040), as part of the Region’s Policy No. P-1: Road Allowance Widening on Regional Roads. This percentage is recognized as a previously approved policy and is recommended to be reconfirmed as a current City guideline.

ALTERNATIVES FOR CONSIDERATION

Recommendation (a)

- 1) Council may make changes to the proposed Official Plan Amendments related to the dedication of road widenings and daylight triangles, to make the policies more permissive or less permissive, or to alter the proposed requirements of the policies.

The disadvantage of making the policies more permissive is that more applicants may be able to avoid providing the maximum road widenings, which may impact the ability of the City to provide for future improvements to the streetscape or the road network, or may necessitate other means of obtaining road widenings for necessary infrastructure improvements (such as purchasing or expropriation).

Other methods of obtaining lands for road widenings would have significant cost implications. If a City project requires a road widening to be purchased / expropriated, rather than obtaining the widening through dedication as a result of a development application process, costs to the City would include the fair market value of the lands to be obtained, compensation for loss of improvements (fencing, landscaping, etc.), compensation for business loss if applicable (for commercial properties), the owner’s legal fees (normally \$1,500) and the City’s legal fees (normally 6.5% of the value of the transaction). Staff from the Planning and Economic Development Department’s Real Estate Section estimate that the average cost for a road widening is \$35,000. However, this amount can vary widely depending on the site, and some widenings cost in excess of \$100,000.

If the policies were less permissive, it would result in a greater number of road widenings being provided, and would result in a lower overall cost to the City for obtaining needed road widths over the long-term. For example, if road widenings were to be required for minor site plan developments and site plans that only deal with natural heritage matters in addition to other applications. However, this approach would create a much more complex process for these applicants, and a

significant increased cost to obtain approvals for minor applications, which can be cost-prohibitive.

- 2) Council may approve only a portion of the proposed Official Plan amendments, such as just making amendments related to the road widening policies, or related to complete application requirements.

Design Review Panel Requirement

Council may choose to wait until the full assessment of the Design Review Panel pilot project is completed, and a decision is made on the future operation of the Panel prior to adding “Design Review Panel Advice” to the list of potential items that can be requested as part of a complete application. Although waiting is an option, staff recommends that it is prudent to add this requirement now, to ensure that while the assessment is done, any important projects continue to be reviewed by the Panel. Should the pilot project not be continued, requests for this item would not be made by staff for future projects.

Community Consultation Requirement

Council may choose not to permit staff to require “Community Consultation” prior to the submission of an application. In many cases, the current public meeting process for development applications where one statutory meeting is held, in addition to the an optional neighbourhood meeting that can be held (as per the procedures in Report PD03105 - Public Participation and Mediation in the Planning Approval Process) may be sufficient. In addition, the Planning Division is also currently reviewing our public meeting processes for applications that are reviewed at Planning Committee to determine if enhancements can be made. Council may choose to wait until this review has been completed before choosing to add “Community Consultation” as a potential requirement for an application. Notwithstanding these considerations, there are several important advantages to being able to require community consultation prior to an application submission, as discussed in the Analysis on pages 17-18. For these reasons, it is recommended that Community Consultation would be beneficial to include in the list of Complete Application requirements.

Right of Way Impact Assessment Requirement

Council may choose not to permit staff to require a “Right of Way Impact Assessment” as a specific item submitted with an application. As an alternative, staff could determine the requirement for a right of way just based on internal discussions between staff Departments / Sections regarding an applicant’s proposal. This method is similar to the City’s current practice. Staff do not recommend this option because this is not a consistent approach and staff may not have all the information that could be used to make a more informed decision,

such as an analysis of the range of impacts and possible alternatives. This method may also encourage more negotiation whereas the requirement for an assessment ensures that an applicant has considered a request carefully based on a specific set of criteria before making it.

Another option is that instead of a separate report, a discussion on impacts and alternatives could be requested as part of a Planning Justification Report or an Urban Design Report. Although this discussion could be included within another planning report, staff recommends that it be kept separate, because it is a very specific assessment with a specific set of criteria to address that is different from a general policy review or urban design review for a proposal.

Recommendation (b)

Staff can provide informal terms of reference and guidance to applicants on what is expected as part of a Planning Justification Report, instead of relying on a Council approved guideline document. The disadvantage of continuing this practice is that it is not a consistent approach and may result in a more onerous review process for staff and applicants. Also, if there is no approved guideline, staff cannot deem an application incomplete if an unsatisfactory report is submitted.

Community Consultation is a new proposed complete application requirement. Staff can discuss informally at the formal consultation stage what information we would like to receive if a neighbourhood consultation meeting is required of an applicant. However, to provide greater consistency and clarity for applicants, it is recommended that a formal guideline be endorsed.

Staff could make a determination on a case-by-case basis on what is a minor development that qualifies for an exemption from a road widening requirement. However, to provide greater consistency and clarity for both staff and applicants, it is recommended that a formal guideline be endorsed.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

2.2 Improve the City's approach to engaging and informing citizens and Stakeholders.

2.3 Enhance customer service satisfaction.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix A – Official Plan Amendment to the Urban Hamilton Official Plan

Appendix B – Official Plan Amendment to the Rural Hamilton Official Plan

Appendix C – Guidelines for the Preparation of Planning Justification Reports

Appendix D – Community Consultation Guidelines

Appendix E – Guidelines for Minor Developments Exempt from Road Widening

Appendix F – Road Widening Policy Amendment (RDS 95-156)

Appendix G – Comments Received

MP/as