



TO: Development and Infrastructure Committee
FROM: Planning and Building
SUBJECT: Feasibility of the Implementation of an Interim Control By-law in the Roseland Community

Report Number: PB-16-14 Wards Affected: 4

File Numbers: 505-08-04

Date to Committee: January 13, 2014 Date to Council: January 27, 2014

Recommendation:

Remove the Character Area Study for Roseland and Indian Point (Study) from the scope and schedule of the Official Plan Review (OPR);

Proceed to complete the Study on an expedited basis, independent of the OPR, with delivery of a staff report bringing forward the results of the Study and any recommended Official Plan Amendment, Zoning By-law Amendment and other planning tools, by February 2015; and

Not Proceed with the enactment of an Interim Control By-law.

Purpose:

The purpose of this report is to respond to a staff direction to assess the feasibility of implementing an Interim Control By-law related to the Character Area Study for Roseland and Indian Point.

Background:

The City is currently conducting the Character Area Study for two neighbourhoods; Roseland and Indian Point, as part of the Official Plan Review (refer to staff direction below). The purpose of the study is to develop planning tools to manage neighbourhood character issues in established residential areas in the face of development and redevelopment pressures.

On December 2, 2013, the Development and Infrastructure Committee considered staff report PB-89-13 which provided an update and revisions to the OPR work plan,

schedule and budget. At that meeting, staff were directed to assess the feasibility of implementing an interim control by-law (refer to staff direction below). The staff direction was in relation to a delegation made on behalf of the Roseland Community Organization which expressed concern that the shift in timing of the OPR would prolong the implementation of the Study's findings and that, in the interim, emerging developments could occur in the community causing adverse impacts and potentially triggering costly Ontario Municipal Board hearings. Given this concern, the delegation requested that the City explore the merits of an Interim Control By-law, a tool provided under *The Planning Act*, which restricts some forms of development until the completion of a City-initiated study.

This issue arises as a result of the fact that the City of Burlington is reaching a stage of maturity and is approaching build-out. This in turn has resulted in some development pressure in several mature and established residential neighbourhoods. In 2011 and 2012, two staff directions related to the Indian Point and Roseland neighbourhoods were formulated in response to development issues and associated Ontario Municipal Board Hearings (OMB Case No.: PL120332 and PL111305, respectively).

The staff directions, provided below in chronological order, have been identified as a component of the 2012 Official Plan Review:

DIRECTION TO REVIEW PLANNING POLICIES FOR INDIAN POINT
Direct the Director of Planning and Building to review the planning policies for the Indian Point neighbourhood in the context of the Official Plan Review which is scheduled to begin in 2012, such review to include direct engagement with the residents of the neighbourhood. (CD-15-2011, September 6, 2011)

Direct the Director of Planning and Building to move ahead as soon as possible with discussion with the public regarding issues related to the lot patterns at Indian Point and Roseland. (PB-44-12-1, July 3, 2012).

In response to these staff directions, the Official Plan Review: Comprehensive Work Plan included the Character Area Study for Indian Point and Roseland as part of the Neighbourhoods Work Plan (PB-53-12) with the intention of incorporating the findings of the Character Area Study into the draft Official Plan amendment originally proposed to be released for public consultation in 2014.

As a result of staffing and scope changes, the timing of the Official Plan Review Work Plan has recently been revised with a target delivery date of Q3/Q4 2015 (PB-89-13).

On December 2, 2013, a delegation on behalf of the Roseland Community Organization (RCO) requested that the Council take the following actions:

1. Implement an Interim Control By-law in Roseland to halt applications for land severance and accompanying minor variances until the Roseland Character Area

Study is completed and consideration is given to the implementation of related Official Plan amendments;

2. Establish additional regulations within this proposed Interim Control By-law to stop the demolition of existing dwellings within Roseland thereby ensuring that future new housing will be built in compliance with the future recommendations evolving from the Roseland Character Area Study;
3. Launch a proactive tree management program in Roseland working with the residents to preserve and enhance the tree canopy of the neighbourhood.

Following the delegation, Burlington City Council issued the staff direction provided below:

FEASIBILITY OF AN INTERIM CONTROL BY-LAW FOR THE ROSELAND COMMUNITY

Direct the Director of Planning & Building to report back by January 2014 on the feasibility of an Interim Control Bylaw for the Roseland community, while the character area study is underway. (SD-29-13, December 2, 2013)

Discussion:

1.0 Interim Control By-law

The *Planning Act* (S. 38) permits a municipality to enact an interim control by-law that will prohibit the use of land, buildings or structures for such purposes as set out in the by-law for up to a year. In order to enact an interim control by-law, a municipality must direct that a review or study be undertaken in respect of land use policies within the municipality. The interim control by-law expires after one year, but can be renewed for only one further year. The study and any policy or by-law changes arising out of the study must be enacted prior to the expiry of the interim control by-law. In the absence of new policies or rules, the previous rules are restored following expiry. Once an interim control by-law has been passed for an area and has expired, no new interim control by-laws can be passed for the area for three years.

An interim control by-law can be passed without prior notice, but notice of the enactment must follow within thirty days. An interim control by-law may be appealed to the Ontario Municipal Board where the municipality must demonstrate that it has complied with the requirements of the Act and that there is a significant planning rationale to justify the enactment. The Board has held in a number of decisions that Interim Control By-laws passed at the request of or to appease ratepayers and without a significant planning rationale, should be repealed.

Enactment of an interim control by-law is regarded as an extraordinary device to be deployed where development, if permitted, would prejudice the establishment of new

policies or rules designed to address a particular issue within a municipality or an area within the municipality. The lack of prior notice, for instance, is exceptional but is balanced by the fact that the by-law lasts for only one year (or a maximum period of two years) and cannot be enacted again for three years. Interim control also has very limited applicability. It can restrict certain land *uses*, but cannot impact other types of development. For instance, it cannot be used to prohibit a severance unless the severance requires a modification of the by-law. Similarly, interim control cannot be used to prevent the issuance of a demolition permit. Of particular note in relation to the staff direction, an Interim Control By-law cannot be used to regulate matters other than the use of land, such as zoning regulations.

Staff does not support the approach of using an interim control by-law in this instance. Interim control has limited applicability to many of the development pressures being experienced in Roseland and Indian Point. It is not correct to assume that interim control will provide an effective, comprehensive prohibition on demolition, severance or construction – as some might expect. Only if these applications are tied to a development project that is within the scope of the interim control prohibition can they be included within the prohibition.

Many of the concerns cited by residents through the Character Area Study and by the delegation at the Development & Infrastructure Committee meeting held on December 2, 2013 are related to regulatory (i.e. zoning) changes rather than policy or land use changes. While staff is satisfied that the status of the study that would form the basis for interim control is well advanced and nearing completion, the work that remains will take some time, especially if the project remains within the scope of the OP Review. Under the present work plan, it will likely remain unresolved until well after the OP is amended in 2015, and probably not until a comprehensive by-law is enacted two years later.

To address the timing issue, staff prefers that the project associated with Roseland and Indian Point simply be removed from the OP Review schedule and expedited along a separate path without the enactment of an interim control by-law. Staff proposes that the schedule for an Official Plan Amendment - together with the by-law amendments and other guidelines affecting development in these areas - be completed and presented for council adoption in early 2015, well in advance of the remainder of the comprehensive Official Plan Review products.

And finally, staff is mindful that an interim control by-law can itself be appealed to the Ontario Municipal Board. Preparation and participation in such a hearing would be a distraction that would delay project implementation and drain staff resources that could be used more effectively in simply producing policy and by-law amendments. Although these may also be appealed, at least the debate and resources assigned to such a hearing will be devoted to policy and rules, rather than the procedural question of whether an interim control by-law is appropriate.

Strategy/Process

For these reasons, staff does not see either the necessity or appropriateness of an interim control by-law in this instance. Instead staff recommends that the OP Review work plan be amended so that the scheduling of the Roseland and Indian Point character study and the consequent policy, by-law and guidelines is advanced for delivery in early 2015.

Options Considered

In order to address timing concerns regarding the implementation of the findings of the Character Area Study, staff has described three policy approaches outlined below:

Policy Approach	Staff Comment
<p>OPTION 1</p> <p>Status Quo: Maintain Study as part of the OPR</p> <p>The Character Area Study remains part of the Official Plan Review Work Plan</p>	<p>The Character Area Study will be completed in 2014, but the related Official Plan and Zoning By-law Amendments will not be implemented until the completion of the Official Plan Review and the Comprehensive Zoning By-law Review.</p> <p>Staff does not recommend this option because of the amount of time that will be required to implement policy and regulatory changes which will follow the completion of the Official Plan Review.</p>
<p>OPTION 2</p> <p>Process the Character Area Study independently from the OPR</p> <p>The Character Area Study is processed as a separate City-initiated Official Plan Amendment with a Zoning By-law Amendment</p>	<p>If the Character Area Study is removed from the Official Plan Review Work Plan, staffing resources can be allocated to processing the study recommendations through City-initiated Official Plan and Zoning By-law Amendments in 2014.</p> <p>Staff recommends this option because the proposed policy and regulatory changes will be implemented sooner through City-initiated Official Plan and Zoning By-law Amendments, but will require prioritizing this policy work over other projects.</p>
<p>OPTION 3</p> <p>Process the Character Area Study independently from the OPR and implement an Interim Control By-law</p> <p>The Character Area Study is processed as a separate City-initiated Official Plan Amendment with a Zoning By-law Amendment and an Interim Control By-law is enacted</p>	<p>If the Character Area Study is removed from the Official Plan Review Work Plan, staffing resources can be allocated to processing the study recommendations through City-initiated Official Plan and Zoning By-law Amendments in 2014.</p> <p>Staff does not support this option because of the following:</p> <ul style="list-style-type: none"> • limited effectiveness in dealing with many of the issues • does not provide the expected prohibition on development activities • the enactment of an Interim Control By-law is susceptible to being challenged through the appeal process.

Financial Matters:

The Character Area Study for Roseland and Indian Point is currently supported by approved capital funding earmarked for the Official Plan Review. No change is proposed to this, other than the timing of completion of the study. In order to expedite the zoning by-law and other regulatory changes, it will be necessary to access some portion of the approved capital funds designated for use in the comprehensive zoning by-law review scheduled to follow the Official Plan Review.

Total Financial Impact

It will be necessary to re-prioritize some expenditures and staff resources, but no additional financial impact is expected.

Source of Funding

Not applicable.

Other Resource Impacts

There will be some re-arrangement of staffing resources to manage the revised project schedule for the Character Area Study, policies and regulations.

Public Engagement Matters:

The public engagement process will be revised to accommodate the revisions to the schedule for the Character Area Study, policies and regulations.

Conclusion:

In response to a direction to consider the feasibility of an interim control by-law to address concerns about development taking place in Roseland, staff does not support use of an interim control by-law. Instead, it is proposed that the Character Area Study be removed from the work plan and schedule for the OP Review and be completed and processed on an expedited basis following a separate path leading to policies, regulations and guidelines for presentation to Council in early 2015.

Respectfully submitted,

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Notifications: (after Council decision)

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