



**SUBJECT: Park Dedication Bylaw Amendment**

**TO: Environment, Infrastructure & Community Services Cttee.**

**FROM: Engineering Services Department**

Report Number: ES-06-22

Wards Affected: All

File Numbers: 930-55

Date to Committee: July 7, 2022

Date to Council: July 12, 2022

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**Recommendation:**

Receive and file Appendix A to engineering services department report ES-06-22, Parkland Dedication Bylaw review, background report; and

Approve amendments to Residential Parkland Dedication Bylaw 57-2005 attached as Appendix B to engineering services department report ES-06-22; and,

Direct the Director of Engineering Services to review the inclusion of Privately-Owned Public Spaces (POPS) as part of the Park Dedication Bylaw and report back to Council in 2024 as part of the comprehensive Parkland Dedication Bylaw and Policy update.

**PURPOSE:**

The purpose of this report is to respond to both legislative changes resulting from Bill 197, *Covid-19 Economic Recovery Act, 2020* and the City's outdated caps on the Alternative Rate. The City's Parkland Dedication bylaws (bylaw 57-2005; and bylaw 147-1993) provide the residential and non-residential policies respectively. As a result of the amendments to the legislation, municipalities imposing the alternative requirement imposing a calculation referred to as the 'Alternative Requirement' in the Planning Act must be updated prior to September 18, 2022. Since the City's existing residential by-law (57-2005) applies the alternate rate requirement, an update is required before the noted date or the by-law will be deemed expired. As such the scope of this amendment to the Planning Act does not require an update to the non-residential by-law 147-1993. Furthermore, an update to Bylaw 57-2005 ensures Burlington's park system expands to

match the community's growing need through the transfer of land for parks and/or the funding for future parks and park infrastructure.

### **Vision to Focus Alignment:**

- Increase economic prosperity and community responsive city growth
  - Support sustainable infrastructure and a resilient environment
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### **Background and Discussion:**

Burlington parks play a vital role in the social, economic, physical and mental well-being of residents. They are critical infrastructure to a healthy city and now recognized as powerful tools for local economies, climate mitigation and the preservation and conservation of plant and wildlife. As Burlington continues to grow, so does the pressure on the city parks. If Burlington does not continue to expand the parks system, there will be a deficiency in parkland as the existing number of parks cannot support the increased growth anticipated in the community.

The city has retained Watson & Associates Economists Ltd. (Watson & Associates) to provide professional financial advice, legislation interpretation, guidance and support for the amendment to the City's residential park dedication bylaw through the Parkland Dedication Bylaw Review, Background Report, attached as Appendix A.

### **What is Parkland Dedication?**

The Planning Act allows municipalities to require land for park (or other public recreational purpose) to be given to the city as part of the approval of a development application. The contribution can come in the form of land conveyance (for a future park) or payment in lieu of land (which the city uses to purchase land for parks and other recreational facilities). Parkland Dedication policies are the tool that Burlington uses to acquire land and/or provide funding for new parks and recreational facilities as the city continues to grow.

The [\*Planning Act\*](#) (the Act) is provincial legislation that sets out the ground rules for land use planning in Ontario. It describes how land uses may be controlled and who may control them.

[\*Section 42 of the Planning Act\*](#) allows Burlington to address growth by requiring all new development to contribute to the expansion and enhancement of the City's parks system.

### **What is the Parkland Dedication Bylaw?**

The Official Plan, required by the Planning Act, describes the City's Park System and sets out the Parkland Dedication policies for the city. Section 42 of the Planning Act requires the city to have a Parkland Dedication Bylaw in order to require parkland dedication as a condition for some types of development or redevelopment in the city. This bylaw is applied when an applicant submits a building permit and the proposed form of development is applicable under the bylaw. The City's Official Plan, and existing Parks Plan (2009) provide the necessary precursors for the city to update the residential by-law with the alternative rate requirement.

The City's new Official Plan (OP) was adopted by City Council in April 2018 and approved by the Region of Halton on November 2020, with modifications. Currently, the new OP is under appeal at the Ontario Land Tribunal. However, since those policies are under appeal, the existing OP remains in effect. As such, the relevant policies under the existing OP concerning parkland dedication are provided for indicating intent of the city to impose the alternative requirement. These policies are also supported by the City's 2009 Parks, Recreation and Cultural Assets Master Plan.

Parkland Dedication is one method the city uses to acquire new parkland. Relying only on parkland dedication through approval of development applications is not enough to achieve the parkland targets outlined in the City's Official Plan because of the maximum limit for dedication set by the Planning Act.

### **Parks Provisioning Update**

On June 9, 2022, Council received a progress update on the City's Parks Provisioning Master Plan (PPMP). The final plan is expected to be delivered to Council in September of 2022 and will entail an assessment of current parkland service levels, guidelines and recommendations on the acquisition of parkland in the short and long-term, as well as decision-making methodology for future parkland acquisition. The completion of the Parks Provisioning Master Plan and the Parks Recreation and Cultural Master Plan will be integral in informing a future parkland dedication by-law update as it relates to policy development for broader parks issues and spending guidelines. Staff anticipate undergoing a comprehensive review of the park dedication by-laws in 2023 with final deliverable in early 2024. At that time, more information will also become available as it relates to Bill 109.

The by-law presented within this report addresses the legislative requirements of the Planning Act as amended by Bill 197, as well as addressing the existing outdated caps on the Alternative Rate contained within City Park Dedication by-law 57-2005.

## **Strategy/process**

The original Parkland Dedication Bylaw (Residential) was passed by Council in 1996. In 2005, the Bylaw was amended (57-2005) to ensure park dedication policies were fair, responsible and consistent with other surrounding municipalities.

## **Existing By-Law and Proposed Changes**

Included within the City's existing by-law are the City's use of an alternate rate or "cap" for medium and high-density units. The current cap rates are \$5,500 for high density units and \$6,500 for medium density units. The current cap rates were set in an environment of much lower real estate prices (2005) than is evident today. Prices have increased significantly over the past 17 years. Leaving the caps at their current state is and will continue to significantly impact Burlington's ability to acquire land using the cash-in-lieu proceeds at current prices as made evident in Chapter 3, Scenario 1 of Appendix A. Staff are recommending increasing the cap rates to \$23,600 for high density units and \$33,400 for medium density units. Furthermore, it should be noted the *Planning Act* was amended in 2015, (Bill 73) to limit the maximum requirement when considering CIL payments to an amount equivalent to 1 ha. per 500 dwelling units. As such the amendment within this proposed bylaw limits the residential CIL to 1 ha. per 500 dwelling units (from 300 dwelling units). The maximum rate for land conveyance remains unchanged at 1 ha per 300 dwelling units. At the time this was done, the intention was to incent acquisition of land rather than collect CIL, in hopes of addressing community parkland needs in Ontario at a quicker pace.

An increasing number of medium to high-density developments cannot fulfil Burlington's parkland dedication requirement solely through on-site park land conveyance given that most new parcels are small, therefore limited in use and capacity. As a result, a significant portion of parkland dedication obligation will need to be satisfied in the form of CIL payments to allow the city to purchase larger green space properties outside of development applications. With property values continuing to increase and accelerated by market demand for housing, the current Cash-in-Lieu rate(s) are inadequate to purchase required lands in the City, therefore making it critical to fund the City's Parkland Dedication Reserve Fund. Refer to amendments to Bylaw 57-2005 (Appendix B).

In order to address both the amendments to the Planning Act introduced by Bill 197 and the City's outdated caps on the Alternative Rate, the following work was undertaken in conjunction with Watson & Associates in order to determine the recommended amendments to the Park dedication by-law.

- a forecast of costs of parkland and other public recreational needs to be funded from CIL of parkland
- Assess amount of residential and non-residential land area to be developed over the forecast period, based on updated growth assumptions from the Region of

Halton's Integrated Growth Management Strategy (IGMS) and estimates of related land value

- Outline options in addressing the alternative rate requirement and the risks and benefits of each

The Parkland Dedication By-Law Review, developed by Watson & Associates in support of the updated alternative rate, is provided as Appendix A, to this report.

### **Privately Owned Public Spaces (POPS)**

Through the development process, there is an emerging concept for municipalities to accept or provide credit for parkland dedication through Privately-Owned Public Space (POPS) agreements. There is a growing body of academic research highlighting some of the challenges encountered with POPS, specifically with regards to perceptions of 'publicness', inclusion (i.e. who is able to use the space), safety and quality. POPS agreements need to consider the risks and challenges inherent in this model given different ownerships, lifecycle management, lack of control over programming and resources required to maintain long-term public access. For these reasons, more analysis is required before any future POPS agreements be contemplated.

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### **Financial Matters:**

The Parkland Dedication By-Law Review (*Background Report*) provided as Appendix A to this report provides a thorough analysis and support to amend the City's residential bylaw 57-2005.

As mentioned earlier in this report, the amendment is required to meet the legislative requirements of Bill 197. The city is required to pass a new bylaw prior to September 18, 2022, to continue to use the alternative requirement to receive park dedication cash in lieu. The current cap rates are \$5,500 for high density units and \$6,500 for medium density units.

Staff are recommending amendments to the bylaw as per scenario 3 (section 3.4) of Appendix A. This amends the park dedication by-law as follows:

#### **Park Dedication – Land Conveyance - No Change**

The Land shall be conveyed to the City at the greater of:

- I. 5% of the total area of the lands to be developed; or
- II. 1 ha. for each 300 dwelling units in the proposed development

### Park Dedication – CIL of Land

- Low Density: 5% of the land area being developed at the time of building permit issuance - **No Change**
- Medium Density, the lesser of:
  - I. the number of units in the proposed development divided by **500** x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
  - II. the number of units in the proposed development x **\$33,400**
- High Density, the lesser of:
  - I. the number of units in the proposed development divided by **500** x the per hectare land value of the land to be developed as of the day before the day the building permit authorizing development is issued; or
  - II. the number of units in the proposed development x **\$23,600**

### **Total Financial Impact**

The Park Dedication Reserve Fund provides funding to the capital program for the acquisition of parkland, the development and renewal of parks and recreational facilities and provides an annual contribution of \$200,000 to the strategic land acquisition reserve fund.

Over the next five-years staff anticipate approximately 17,000 units based on the development forecast related to high/ medium density units in which the city could anticipate cash in lieu. This is a high-level estimate of units and is highly variable and subject to change based on timing of building permits. Under the City's existing by-law these units could contribute up to \$95 million in CIL revenues, compared to \$400 million under the proposed bylaw.

It is important to note, that as the collection of park dedication CIL revenue is tied to building permit issuance, timing of revenue is difficult to predict and determine with accuracy. For example, in 2019, 2020, and 2021 the city received \$1.7 million, \$0.9 million and \$2.9 million respectively. To date the city has received \$47,000 in park dedication revenues. Though the increase in revenue is significant the timing of receipt is difficult to gauge when planning for future use.

### **Source of Funding**

All CIL of parkland funds received by the city are maintained in the City's Parkland Dedication reserve fund. The funds are used for the acquisition of land and development and renewal of parks and/or other recreational purposes in accordance with the

legislation. As of March 31<sup>st</sup>, 2022, the uncommitted balance in the reserve fund is \$2.87 million.

Annually the city provides to Council Treasurer's Statements outlining annual revenues and spending to/from the Park Dedication Reserve Fund. These statements are approved by Council and posted on the City's website, as required by the *Planning Act*.

### **Other Resource Impacts**

Not applicable.

### **Next Steps**

As mentioned above, staff are bringing forward the amendment to the Residential Park Dedication bylaw (57-2005) to meet the legislative requirements of the Planning Act as amended by Bill 197, and to address the outdated caps on the Alternative Rate within the City's by-law. The amended by-law 57-2005, being a transitional by-law, that will be revisited when the PPMP is completed. At which time staff will complete a more comprehensive update that reflects broader policy issues, and develops clear, and robust spending policy guidelines that will update the residential park dedication bylaws to be more reflective of issues and trends the city is seeing in the community.

The city's proposed transitional by law will proceed to council on July 12<sup>th</sup>, 2022, and upon approval will be effective the same day. Based on the Planning Act as amended by Bill 197 legislation, the City's parkland dedication bylaw is subject to appeal as it contains the alternative rate provisions. Final day for appeal of the by-law is 40 days after the bylaw is passed (August 22, 2022), and within that time should the bylaw be appealed developers will still be required to pay CIL as per the new bylaw under protest.

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### **Climate Implications**

Not Applicable.

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### **Engagement Matters:**

As part of the process to amend the residential park dedication by-law, the city has consulted with the Strategy Committee (senior staff) and provided an update to HDLC (development industry and staff). On April 28, 2022 staff convened HDLC to provide an overview of the PPMP, notification that the park dedication by-law will be amended and options under consideration with respect to the alternative rate and timelines. On June 14<sup>th</sup>, 2022 staff updated HDLC that the alternative rate(s) will be increased and not

removed entirely as part of this by-law amendment. Furthermore, staff indicated that a more comprehensive bylaw update will be undertaken following completion of the PPMP and Parks Recreation and Cultural Master Plan.

The Parkland Dedication By-Law Review and proposed by-law was released on June 24, 2022, on the City's website. Based on changes introduced by Bill 197 any bylaw utilizing the alternative rate may now be appealed to the Ontario Lands Tribunal (OLT). Appeals are limited specifically to policies related to the alternative rate for land, and alternative CIL rate. The last day for appealing the by-law is August 22, 2022, 40 days after Council approval. After passing the bylaw, the city will publish notice of bylaw passage within 20 days (August 1, 2022).

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### **Conclusion:**

Land prices have increased significantly over the past 17 years. The recommended changes to the bylaw should be implemented to replace what is currently in effect, as the city has to purchase land for parks and other recreational uses at values much higher than what was anticipated in 2005.

The city is bringing forward an amendment to the residential parkland dedication bylaw in accordance with the Planning Act which will be revisited upon completion of the Park Provisioning Master Plan (September 2022) and the Parks Recreation and Cultural Master Plan (December 2023).

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Respectfully submitted,

Marion Rabeau  
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### **Appendices:**

- A. Parkland Dedication By-Law Review: Background Report (Watson & Associates)
- B. Bylaw xx-2022



**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.