



SUBJECT: Update to the Streamlined Development Application Fund process improvements

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning

Report Number: PL-20-23

Wards Affected: All

Date to Committee: February 28, 2023

Date to Council: March 21, 2023

Recommendation:

Receive and file community planning department report PL-20-23 which summarizes the effect of the Building Code Act and Ontario Building Code regarding applicable law on the process improvements that have been identified through the Streamline Development Approval Fund (SDAF) project.

PURPOSE:

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
- Deliver customer centric services with a focus on efficiency and technology transformation

Background and Discussion:

At the January 10, 2023 meeting of the Community Planning, Regulation and Mobility Committee Council were presented with the significant process improvements of a consolidated Pre-Building Permit process (the PBP) which staff have been able to achieve with respect to both processing time and elapsed time as experienced by applicants ([Report PL-02-23](#)). The PBP built upon applicants access to a single point of contact with enhancements to the coordinated processing of Zoning Clearance Certificates (ZCC), Grading and Drainage Clearance Certificates (GDCC, By-law No.52-2018 and 024-2020), and Forestry Permits (By-law Nos. 068-2013 and 040-2022).

On October 25, 2022 the Province passed Bill 23, giving some aspects of the Bill Royal Assent on November 25, 2022, bringing some elements of the Bill into effect immediately. Bill 23 is an omnibus bill impacting the Planning Act, the Building Code Act, and other provincial legislation that effects development applications. As a result, development applications consisting of 10 residential units or less no longer require Site Plan Approval.

This change in legislation has shed light on areas of the PBP that are required to align with requirements of the Building Code Act and Ontario Building Code, section 1.4.1.3, ('the OBC'), regarding applicable law.

The PBP was envisioned to ensure compliance with City of Burlington By-laws relating to zoning, grading and drainage and forestry prior to an applicant making a submission for a building permit. However, the OBC only identifies zoning compliance as applicable law for building permit issuance, while site grading (grading and drainage) can be addressed through the OBC to ensure no adverse effects on adjacent properties, and therefore must be satisfied prior to the issuance of a building permit. While local by-laws related to tree protection are enforceable under the Municipal Act, they do not have bearing on an application for development or a building permit.

Strategy/process

SDAF has incorporated the changes as follows, (see Appendix A of this report for the revised process map):

1. Applicants will continue to have a single, consolidated application form which clarifies the required sequencing of clearances, i.e.:
 - ZCC is required prior to application for Building Permit;
 - GDCC (when applicable) is required prior to issuance of Building Permit; and
 - Forestry Permits (when applicable) are encouraged in advance of construction and required, with the risk of enforcement and penalties, should construction proceed without complying with the Public or Private Tree By-laws;
2. After the initial consolidated application pre-screening, each department will independently accept their respective application, proceed with the review of application materials, and issue their clearances/permits;
3. Applicants may apply for Building Permit as soon as ZCC has been issued;
4. Applicants will be issued a Building Permit upon the approval of the Chief Building Official (CBO) and once a GDCC has been issued;

5. With a focus on customer experience, Forestry Staff will work with applicants from the initial pre-screen and throughout the development application process to encourage an application for Tree Permits prior to a Building Permit; and,
6. Should it be deemed necessary, Public and Private Tree By-law compliance will be addressed through enforcement.

Work is currently taking place to adapt the Visibility Tool, commonly referred to as an online portal, (Experiment 7, Report PL-02-23), to reflect this revised process (see Appendix B of this report for a depiction of the revised application landing page). This critical work will delay the implementation of this experiment into Spring 2023.

Opportunities

This revised process may further reduce PBP elapsed time, as comments from three independent disciplines no longer need to be coordinated. As a result of decoupling the three streams in PBP, it is no longer a single approval process. We have therefore changed the name to “pre-building approvals process”, maintaining the familiar acronym of ‘PBP’.

An effect of this revised process is that Development Engineering will have certainty of the building footprint due to issuance of the ZCC. Therefore, Site Engineering will explore opportunities to further streamline the GDCC By-law.

With the launch of this revised process, Forestry staff have revised the internal review process which places more of the onus on the applicant to comply with applicable tree by-laws through voluntary application submissions. It is anticipated that this will reduce or eliminate wait times for applicants that are not working around existing trees.

Primarily, through strict adherence to the legislated process, this revised process minimizes the risk of litigation of the building permit process.

Disadvantages

Applicants will no longer experience a consolidated review process with a single point of contact for the duration of the PBP as each discipline will proceed on its own timeline. Applicants will have a single point of contact until the end of the pre-screen process. Staff are compensating for this with our “One Window” counter where we will have subject matter experts from all disciplines there to help customers when needed. The Visibility Tool will also communicate the status and other details associated with each application for the separate streams of review.

Applicants may experience increased elapsed time through the building permit application if issues with the GDCC have not been resolved in advance of the Building Department completing their review.

It is anticipated that this revised process will result in an increase in enforcement measures to ensure GDCC and tree by-law compliance, rather than through proactive measures to prevent off-site impacts and tree preservation planning. It is anticipated that this will result in more applicants paying penalties resulting from enforcement of the GDCC By-law and Public and Private Tree By-laws as well as the loss of urban tree canopy.

Next Steps

Staff will continue to explore the impacts of Bill 23 on the development process.

Staff will continue to monitor for further changes in Provincial legislation that may impact the development process. For example, proposed modifications to the Provincial Policy Statement and A Place to Grow are anticipated in Q1, 2023. More information regarding what may be contemplated by the Province can be found in [Council-Information-Package-January-13-2023.pdf \(burlington.ca\)](https://www.burlington.ca/council-information-package-january-13-2023.pdf)

Staff are preparing for a Council Workshop in April, 2023 to provide a comprehensive review of legislative changes to date. Operational changes required, including those areas where Halton Region and Conservation Halton roles in the development review process have changed, will also be presented.

Options Considered

Staff considered proceeding with the PBP, as presented in Report number PL-02-23. This option exposes the City to liability resulting from delaying the application for a Building Permit in relation to by-laws that are not matters of applicable law, as referenced in the OBC. Therefore, this option is not recommended.

Financial Matters:

Not applicable. Additional costs associated with adjustments to the Visibility Tool fall within the original SDAF funding amount.

Total Financial Impact

Not applicable.

Source of Funding

Not applicable.

Other Resource Impacts

Not applicable.

Climate Implications

The change in process may have an unintended climate change impact as a result of enforcement of the Public and Private Tree By-laws taking place after trees have already been impacted by development.

Trees contribute towards the City's climate change goals both through their role in climate mitigation, sequestering carbon, adaptation by reducing the heat island effect, promoting infiltration and interception of rainwater, and improving air quality. Trees also improve the overall environment through their aesthetic qualities, providing habitat, reducing noise pollution, contributing to stress reduction, as well as screening and privacy. These benefits accrue to both private properties and the community at large.

Staff will mitigate the risk of lost urban tree canopy by proactively working with applicants at their initial submission to the PBP.

Engagement Matters:

Departments involved in the development service area include: Forestry, Engineering Services, Community Planning, Building and By-law, Finance and Legal. Adaptation of the SDAF initiative was an internal exercise to ensure legislative compliance.

Engagement to build awareness and collect feedback from the public and the development industry will be ongoing and will support continuous improvement of the PBP.

Conclusion:

The revised PBP will provide both benefits and disadvantages to applicants and to the City. Applicants may experience a shorter elapsed time through their application review, but risk enforcement penalties if they do not comply with all relevant City By-laws. City staff will also experience a more efficient review process without having to coordinate with other disciplines. However, the City may also experience a greater loss of urban tree canopy if applicants do not comply with respective by-laws. Staff will work proactively with applicants to mitigate these risks to the applicant and the City.

Critically, the revised process brings the PRP into alignment with the OBC and reduces the City's risk of litigation of the building permit process.

Respectfully submitted,

Brynn Nheiley

Executive Director, Community Planning
Regulation and Mobility

Scott Hamilton

City Engineer, Director of Engineering
Services

Jamie Tellier

Acting Director of Community Planning

Enrico Scalera

Director of Roads, Parks and Forestry

Nick Anastasopoulos

Chief Building Official, Director of Building
and By-law

Appendices:

- A. Revised PBP process map
- B. Depiction of the revised application landing page

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.