



SUBJECT: ROPA 48, 49 and Bill 23 - Approach to achieve conformity and compliance

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-05-23

Wards Affected: All

File Numbers: 505-08

Date to Committee: February 28, 2023

Date to Council: March 21, 2023

Recommendation:

Receive and file community planning department report PL-05-23 regarding ROPA 48, 49 and Bill 23 – Approach to achieve conformity and compliance.

PURPOSE:

The purpose of this report is to update the process by which recommended modifications to the City's new Official Plan (Burlington Official Plan, 2020) will be brought before Council for consideration as the City's position on conformity with Regional Official Plan Amendments No. 48 ("ROPA 48") and No. 49 ("ROPA 49"), and compliance with the applicable elements of Bill 23 "*More Homes Built Faster Act, 2022*" (as of date of writing).

This report outlines the approach and timeline for advancing the City's position through the Ontario Land Tribunal's (OLT) hearing of the appeals to the Burlington Official Plan, 2020, with respect to:

- proposed modifications to conform with ROPA 49 including, where required, revisions to the recommended ROPA 48 modifications endorsed by Council on July 12, 2022 (PL-52-22); and
- proposed modifications to comply with applicable legislative changes introduced through Bill 23.

With respect to policies of the Burlington Official Plan, 2020 that are in force (not subject to appeal), this report identifies that a different process will be undertaken to bring the

Burlington Official Plan, 2020 into conformity with ROPA 48 and ROPA 49, and into legislative compliance with Bill 23. This report also discusses the ongoing nature of the legislative changes being enacted through Bill 23 “*More Homes Built Faster Act, 2022*”.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
 - Improve integrated city mobility
 - Support sustainable infrastructure and a resilient environment
 - Building more citizen engagement, community health and culture
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Background and Discussion:

Background

In November of 2022, in response to a series of postings on the Environmental Registry of Ontario (ERO) and the Ontario Regulatory Registry (ORR) , Committee and Council considered staff report titled [CS-12-22 Consultations on Bill 23 More Homes Built Faster Act, 2022](#). The report presented the City’s guiding principles to use in responding to the wide range of ERO postings, ORR postings, and the Province’s proposed review of housing and land use policies to remove barriers to getting more homes built. In addition, the report highlighted the recent Provincial decision regarding the modification and approval of ROPA 49.

In addition to that report, Council heard a verbal update regarding the impact of the approval of ROPA 49. As a result of that discussion, the following Staff Direction was approved:

Direct the Director of Legal Services, and Corporation Counsel, and the Director of Community Planning to provide a detailed analysis of the effect of ROPA 49, a listing of strategic considerations, implications on specific sites, and an action plan to implement the decision informed by local vision in January with regular updates to follow; and

Direct the City Manager to work with the Executive Director of BEDC to bring back a report regarding the Alinea Group Letter of Intent in December. (SD-26-22)

As previously noted, the purpose of this report (PL-05-23) is to present only the approach for addressing conformity with the Regional Official Plan and compliance with applicable legislative changes introduced through Bill 23. This report does not present proposed modifications to the Burlington Official Plan resulting from ROPA 49 and Bill 23 but the timing for bringing forward those modifications is discussed later in this

report. Other upcoming staff reports and Council Workshops will work to address the balance of the Staff Direction above.

Burlington Official Plan, 2020

Burlington's new Official Plan was approved by the Region of Halton in November 2020, and prior to:

- the approval of ROPA 48 in November 2021;
- the approval of ROPA 49 in November 2022; and,
- the changes to the *Planning Act* in late 2022.

On January 4, 2023 the OLT issued a Decision following a Case Management Conference held on October 28, 2022. That Decision confirmed which parts of the City's new Official Plan are subject to broad appeal (i.e., not site-specific), and which parts are in effect (either due to lack of broad appeal or due to *Planning Act* protections). As of the date of that decision, the majority of the Plan remains subject to broad appeal. Where new policies remain appealed, the policies of the Burlington Official Plan, 1997 continue to apply, along with the current Zoning By-law. The OLT Decision also confirmed that no portion of the new Official Plan, except for the policies where the *Planning Act* limits appeal rights (i.e., planning horizon and additional residential unit policies) is in force or effect upon lands that are subject to site-specific appeals.

The *Planning Act* requires that any decisions made regarding a local Official Plan must conform with the upper-tier Official plan that is in force at the time of the decision. This includes decisions of the OLT regarding appeals to a new Official Plan or an Official Plan amendment. Therefore, in making any decision regarding the subject appeals to the City's new Official Plan, the OLT will need to ensure the plan and its policies conform with the Regional Official Plan, as amended by ROPAs 48 and 49.

As outlined in greater detail in later sections of this report, staff developed an approach to address conformity with ROPA 48- including the preparation of recommended modifications to the Burlington Official Plan, 2020 for consideration by the OLT. At that time, Council and staff acknowledged that the ongoing ROPA 49 process would require staff to re-assess conformity once the ROPA was approved by the Province and then return to Council for further direction.

Once Bill 23 has received Royal Proclamation, the Regional Official Plan will be deemed to constitute an official plan of the City of Burlington. As the timing of this transition is not yet known, it is prudent to set out an approach to ensure that the Burlington Official Plan, 2020 conforms, or does not conflict with, the amended Regional Official Plan.

Regional Official Plan Review

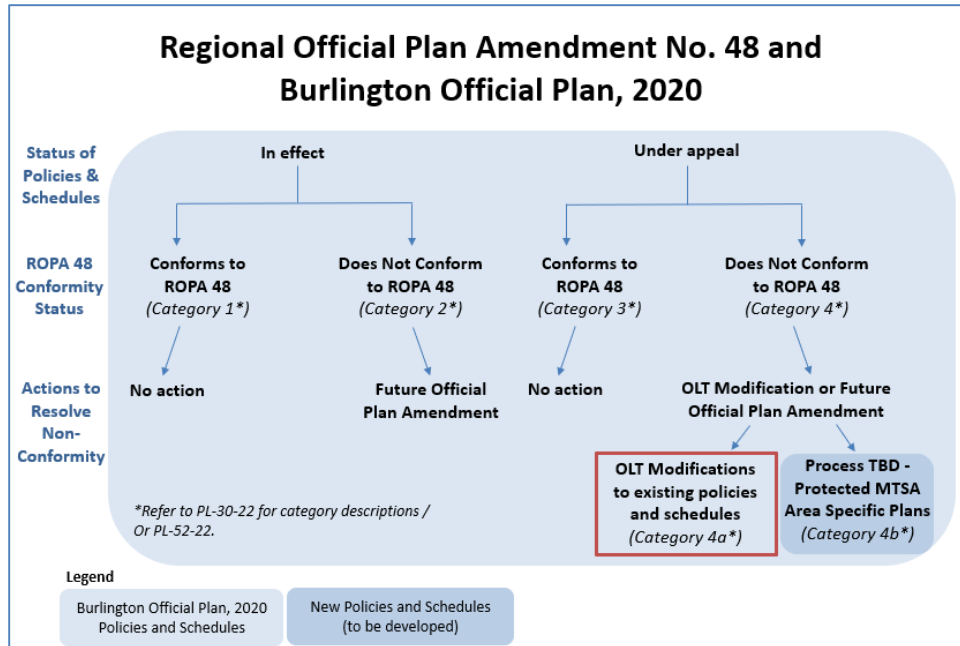
The Regional Official Plan Review (ROPR) was advanced through several official plan amendments, with ROPAs 48 and ROPA 49 being the first and second amendments approved by the Province. The City was fully engaged in providing comments and input throughout the Region's Municipal Comprehensive Review/ Official Plan Review. Fundamentally, the Regional process was driven by local plans and priorities.

ROPA 48

After the approval of ROPA 48, it was determined that a response to address conformity with the newly confirmed Regional Urban Structure was an important next step to support the timely resolution of appeals to the City's new Official Plan. In the spring and summer of 2022 staff brought three reports before Council related to ROPA 48 to:

1. Propose an approach to modify the Burlington Official Plan, 2020 to resolve certain matters of non-conformity with ROPA 48: [PL-41-22 Regional Official Plan Amendment 48 – Approach to achieve conformity](#);
2. Propose modifications to be released for public and agency consultation: [PL-30-22 New Burlington Official Plan– Proposed Modifications for ROPA 48 Conformity](#); and,
3. Recommend modifications to the Burlington Official Plan, 2020 for Council endorsement: [PL-52-22 New Burlington Official Plan recommended modifications for ROPA 48 conformity](#).

Through the ROPA 48 conformity analysis, staff proposed a means of categorizing the work based on the respective process required to resolve any matters of non-conformity, according to the status of the affected policies of the new Official Plan. The following diagram identifies the categories initially developed:



For ease of reference, the general description of the categories has been provided below. For a full discussion of the categories and the broader ROPA 48 approach reference can be made to [PL-30-22 New Burlington Official Plan – proposed modifications for ROPA 48 conformity](#) and [PL-52-22 New Burlington Official Plan recommended modifications for ROPA 48 conformity](#).

- **Category 1:** Policies and schedules of the Burlington Official Plan, 2020 which are in effect and conform to ROPA 48.
- **Category 2:** Policies and schedules of the Burlington Official Plan, 2020 which are in effect and do not conform to ROPA 48.
- **Category 3:** Policies and schedules of the Burlington Official Plan which are under appeal and conform to ROPA 48.
- **Category 4:** Policies and schedules of the Burlington Official Plan which are under appeal and do not conform to ROPA 48.
- **Category 4a:** Policies and schedules where modifications can be proposed to address conformity with ROPA 48 at this time.
- **Category 4b:** Policies and schedules where modifications are not possible at this time because local study and interpretation is required to confirm implementation requirements.

On July 12, 2022 Council endorsed the recommended modifications to the Burlington Official Plan, 2020 as follows:

Direct the Executive Director of Legal Services and Corporation Counsel, and the Director of Community Planning to advance the recommended modifications through the Ontario Land Tribunal's consideration of the appeals to the Burlington Official Plan, 2020.

As a result of the recent approval of ROPA 49 and the legislative changes introduced through Bill 23, it is necessary to undertake a similar conformity/compliance analysis of the new Official Plan in relation to the updated Regional and Provincial policy framework.

ROPA 49

The general effect of the draft ROPA 49 was first discussed in May 2022 via [PL-37-22 Regional Official Plan Review ROPA 49 Staff Comments](#). At the time of review staff concluded:

The draft Regional Official Plan Amendment (ROPA) 49 implements the results of the Integrated Growth Management Strategy, which directs all growth to 2041 within the existing Regional Urban Boundary and provides a framework for determining how and when growth between 2041 and 2051 will be distributed through a future Regional Official Plan Amendment.

Staff are supportive of the intensification-first approach to accommodating growth within the existing Regional Urban Boundary to ensure that the existing urban areas are serviced first to support the development of complete communities where residents have access to housing, jobs, local services, schools, recreation, open space, as well as public and active transportation options

On November 4, 2022, the Minister of Municipal Affairs and Housing issued the Notice of Decision with respect to ROPA 49. The decision of the Minister regarding an Official Plan Amendment adopted in accordance with section 26 of the *Planning Act* is final and cannot be appealed. The Minister made forty-five (45) modifications to ROPA 49 to address Provincial policy direction and government priorities related to growth management to the 2051 planning horizon. While not an exhaustive list, important modifications made by the Minister to ROPA 49 included:

- Identifying local municipal distribution of population and employment growth to 2051 in Table 1 of the Regional Official Plan, whereas previously ROPA 49 included only the total Regional population and employment distribution to 2051. The policies within ROPA 49 detailing the process for determining the distribution of growth from 2041 to 2051 were also deleted.
- Directing future work (via amendment) for the Region in order to update Table 2 and Table 2A of the Regional Official Plan to align with modified Table 1. In

response, the Region and its Local Municipal partners are collaboratively and collectively preparing Joint Best Planning Estimates based on the most up to date information from the Integrated Growth Management Strategy and will identify key areas of change.

- Further modifying the Regional Urban Structure through mapping changes. Changes specific to Burlington include:
 - Two former Regional Employment Areas are now new Community Areas (Designated Greenfield Areas). (1200 King Road / Bronte Creek Meadows)
 - Three discontinuous former North Aldershot Areas are now new Community Areas (Designated Greenfield Areas / Employment Areas) (Eagle Heights / Bridgeview Community)

Although not impacted by the Minister's modifications, any element of ROPA 49 that impacts the ROPA 48 recommended modifications must also be considered and captured. The work must also ensure that any recommended modifications to the Burlington Official Plan, 2020 conform, or do not conflict, with the Regional Official Plan in its entirety.

Bill 23

In December staff prepared report [PL-82-22 City of Burlington submissions as of November 25 on Ontario's Housing Supply Action Plan and Bill 23](#) to share submissions to the Province of Ontario in response to the various consultations related to *Bill 23, More Homes Built Faster Act, 2022*. The legislative and regulatory changes introduced through this Bill are the most drastic changes to the land use planning process that Ontario has seen in decades. PL-82-22 included the City's submissions on:

- [Planning Act \(Schedule 9 of Bill 23\)](#)
- [Heritage Act](#)
- [Planning Act and Development Charges Act](#)
- [Conservation Authorities](#)
- [Updates to Ontario Wetland Evaluation System](#)
- [Proposed Municipal Act Changes: Municipal Rental Replacement By-Law](#)
- [Proposed Changes to Ontario Regulation 232/18](#)
- [Proposed Updates to the regulation of development for the protection of people and property from natural hazards in Ontario](#)
- [Proposed Changes to Ontario Regulation 299/19: Additional Residential Units](#)
- [Seeking Input on Rent-to-own Arrangements](#)
- [Proposed Amendments to the Greenbelt Plan](#)

PL-82-22 also noted that there were three further ERO postings that the City intended to respond to by the end of December 2022. Those responses were submitted to the Province by the deadline and the resulting submissions posted through the [January 13, 2023 Council Information Package](#). These submissions are attached to this report as appendices:

- A. ERO Submission: Review of A Place to Grow and Provincial Policy Statement;
- B. ERO Submission: Proposed Revocation of the Parkway Belt West Plan; and,
- C. ERO Submission: Conserving Ontario's Natural Heritage.

While the commenting deadlines ended in late 2022, Committee and Council may provide any additional comments to be directed to the Province, or to be used to inform future comments on other forthcoming proposals.

Strategy/process

To support the timely resolution of appeals, staff are working through the development of recommended modifications to the Burlington Official Plan, 2020 to address conformity with ROPA 49 and compliance with applicable elements of Bill 23. A comprehensive review of conformity with the Regional Official Plan as a whole is required (i.e., beyond the policies amended through ROPA 49, such as policies relating to the development of new communities).

Staff are proposing a process to develop a single set of recommended modifications to the appealed policies of the Burlington Official Plan, 2020 to address conformity with ROPAs 48 and ROPA 49, and compliance with applicable elements of Bill 23. This process will also identify conformity or compliance issues impacting policies of the Burlington Official Plan, 2020 that are currently in effect, which will need to be addressed via future amendments.

Timeline and Next Steps

Staff will analyze the Burlington Official Plan, 2020 for conformity with the Regional Official Plan and compliance with applicable legislative changes introduced through Bill 23. Staff will report back to Council in Q2 of 2023 regarding any issues of non-conformity or non-compliance, including recommended modifications for consideration by the OLT (as required).

Options Considered

Not applicable.

Financial Matters:

Not applicable.

Total Financial Impact

Not applicable.

Source of Funding

Not applicable.

Other Resource Impacts

Not applicable.

Climate Implications

The Region's Urban Structure focuses on growth within the existing Urban Areas of the Region of Halton. Through the identification of a hierarchy of Strategic Growth Areas across the Region, the Regional Urban Structure reinforces the Region's ability to accommodate intensification and encourage and prioritize transit-supportive growth.

Engagement Matters:

The Regional Official Plan review has been conducted with extensive public consultation and engagement, in which the City was a formal participant. For high level details on the process and inputs prior to the adoption and approval of ROPA 49 reference can be made to [Appendix A of Report PL-06-22](#).

Staff will report back on engagement matters with respect to the Burlington Official Plan, 2020 once the conformity and compliance analysis for the Regional Official Plan and Bill 23 has been completed.

Conclusion:

Work is underway to assess where modifications to the City's new Official Plan would be required to conform with the recently amended Regional Official Plan, and to comply with changes to Provincial legislation introduced through Bill 23. This report sets out an approach to bring forward recommended modifications to be endorsed by Council, which would then be advanced through the OLT's consideration of the appeals to the Burlington Official Plan, 2020.

Respectfully submitted,

Alison Enns, MCIP, RPP

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Appendices:

- A. ERO Submission: Review of A Place to Grow and Provincial Policy Statement
- B. ERO Submission: Proposed Revocation of the Parkway Belt West Plan
- C. ERO Submission: Conserving Ontario's Natural Heritage

Notifications:

Region of Halton

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.