

Staff Report

Development Services Department



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REPORT TO: Planning and Strategic Initiatives Committee

DATE OF MEETING: June 19, 2023

SUBMITTED BY: Garrett Stevenson, Interim Director of Planning, 519-741-2200 ext. 7070

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WARD(S) INVOLVED: All Wards

DATE OF REPORT: June 8, 2023

REPORT NO.: DSD-2023-239

SUBJECT: Implementation of Bill 13, Bill 109, and Bill 23
City-Initiated Official Plan Amendment OPA23/001/K/TR
City-Initiated Zoning By-law Amendment ZBA23/004/K/TR

RECOMMENDATION:

1. That City Initiated Official Plan Amendment OPA23/001/K/TR, for the purpose of implementing Bill 13, Bill 109, and Bill 23, including policies to delegate certain minor zoning by-law amendments to staff, policies to update public consultation matters, and to update the Official Plan to reflect new Provincial legislation, be adopted, in the form shown in the Official Plan Amendment attached to Report DSD-2023-239 as Appendix 'A1', and accordingly forwarded to the Region of Waterloo for approval, and
2. That City Initiated Zoning By-law Amendment Application ZBA23/004/K/TR to amend Zoning By-law 85-1, be approved in the form shown in the "Proposed By-law" attached to Report DSD-2023-239 as Appendix 'B1', and

That City Initiated Zoning By-law Amendment Application ZBA23/004/K/TR to amend Zoning By-law 2019-051, be approved in the form shown in the "Proposed By-law" attached to Report DSD-2023-239 as Appendix 'B2', for the purpose of adding new regulations for developments no longer subject to site plan control relating to design and site functionality elements, and to align with new permissions for Additional Dwelling Units, and

3. That the By-law 2005-170 and By-law 2007-042 and By-law 2012-069, being the City of Kitchener Delegated Approval By-law, as amended, be repealed and replaced with the “Proposed By-law” attached to Report DSD-2023-239 as Appendix ‘C’, to delegate minor zoning by-law amendments including the removal of Holding provisions and zoning by-law amendments which are minor in nature to make clerical, technical, administrative, and other minor amendments to the Zoning By-law to the Director of Planning, and
4. That the By-law 2007-41, as amended by By-law 2012-070, being Chapter 683 – Site Plan Control of the Municipal Code, as amended, be repealed, and replaced with the “Proposed By-law” attached to Report DSD-2023-239 as Appendix ‘D’, for the purpose of updating the Municipal Code to align with revised site plan control requirements in the Planning Act, and
5. That the By-law 2013-093, being Chapter 620 - Demolition Control of the Municipal Code, be amended by the “Proposed By-law” attached to Report DSD-2023-239 as Appendix ‘E’, to include lands zoned RES 1 through RES-5 within the Demolition Control Area, and
6. That Council Policy MUN-PLA-1095 - Public Participation in the Planning Process, be amended by the “Proposed Council Policy” attached to Report DSD-2023-239 as Appendix ‘F’, to recognize current practices which include postcard notifications to property owners and occupants within 240 metres, to have digital Neighbourhood Meeting for development applications, and to allow for revised notice requirements, and,
7. That Council Policy FIN-GRA-2006 - Development Charges Payment for Affordable Rental Housing and FIN-PLA-2031 - Affordable Housing Development Charges Waiver Policy, attached as Appendix ‘G’, be repealed in their entirety as due to recent changes to the Development Charges Act through Bill 23, non-profit housing developments are now exempt from paying Development Charges (DCs), and further,
8. That two additional FTEs be added to the core complement of the Planning Division to support the timely review of development application in accordance with the timeframes prescribed by Provincial legislation.

REPORT HIGHLIGHTS:

- The purpose of this report is to implement amendments to the Official Plan, zoning bylaws and other city bylaws and policies to address changes to provincial legislation over the past year to build housing faster. The three provincial bills addressed through this report include Bill 13, Bill 109, and Bill 23, addressing changes to the Planning Act and Development Charges Act (associated with affordable housing only), as summarised in Table 1.
- In April 2022, Bill 109, *More Homes for Everyone Act* came into effect with the intent to “reduce red tape” by speeding up the development approvals process by imposing fiscal penalties for municipalities if decisions for Zoning By-law amendments with or without an Official Plan amendment, and approvals for Site Plan applications do not meet prescribed timelines.

- In the summer of 2022, staff initiated a review of the City’s development review processes to satisfy the legislated timelines of Bill 109, while mitigating financial risks to the corporation. While many of the resulting improvements have streamlined processes at a staff level, some require Council approval through this report including matters to implement new procedural options added to the Planning Act through Bill 13, *Supporting People and Businesses Act, 2021* such as expanding matters Council may delegate to include minor zoning by-law amendments to help streamline planning decisions.
- In November 2022, the Province introduced Bill 23, *More Homes Built Faster Act*, which is an omnibus bill impacting nine different development-related Acts. The purpose of Bill 23 is to further streamline approvals for housing and reduce barriers and costs to development. Given the breadth of changes resulting from Bill 23, this report includes amendments to several City polices and bylaws to ensure alignment with the legislation.
- Financial implications of this report relate to achieving legislated timelines to avoid fee refunds for Zoning By-law amendment and Site Plan application fees which are now identified in applicable reports to Council. While most applications, to date, have met the legislated timelines, additional process changes are needed to maintain those results.
- Community engagement included a virtual Community Meeting on March 29th, 2023.
- A request to add two full time employees (FTEs) to the Planning Division to adequately and effectively resource the review of development applications within the prescribed timeframes. Development review staff and management time has been utilized to support the implementation of *Housing For All* as well as other planning projects. Two additional FTEs would create development review staff and management capacity for the review of development applications.
- This report supports the delivery of core services.

Table 1: Summary of Staff Recommendations

<u>New Requirement</u>	<u>Implication</u>	<u>Recommended Change</u>
Planning Application fees for Zoning By-law Amendment and Site Plan Applications are now subject to refunds	Decreased revenue to the Planning Division	Approve amendments to the Official Plan which proposes the enactment of tools to increase speed and efficiency of review including; <ul style="list-style-type: none"> - Use of Holding Provisions for additional technical study, - Delegated authority for minor zoning by-law amendments, including lifting holding provisions, to the Director of Planning, - Updated and clarified requirements for complete applications,

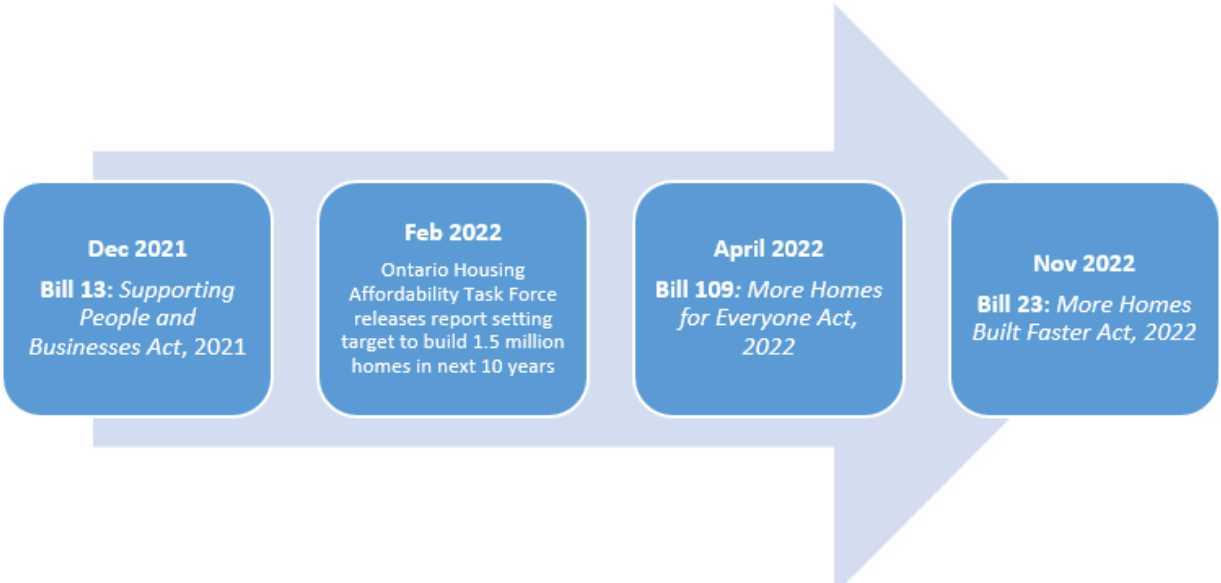
		<ul style="list-style-type: none"> - Shorten statutory public consultation notice period to align with staff report posting, and to allow for greater agenda setting flexibility, and - Digital neighbourhood meetings for every single development application scheduled when the application is received. <p>Consistent focus on continuous improvement for end-to-end file management including additional software, process improvements, etc. Support additional FTEs to the Planning Division to increase development applications review capacity.</p>
<p>Residential buildings with 10 units or less are exempt from site plan control</p>	<p>Limited municipal authority to regulate matters of exterior design and appearance of buildings through the site plan process</p>	<p>Approve a Zoning By-law Amendment to incorporate certain design standards from the urban design manual into Zoning By-laws to ensure safe and functional sites, including;</p> <ul style="list-style-type: none"> - minimum street line façade opening, - minimum front yard landscaped, - minimum driveway width, and parking lot standards. <p>Updates to Site Plan Control By-law to reflect Provincial legislative changes.</p>
<p>Non-profit housing developments are now exempt from paying Development Charges (DCs)</p>	<p>Development Charges for “Non-profit housing developments” are now exempted and do not need to be funded by the Affordable Housing Reserve Fund.</p>	<p>Repeal Council policies FIN-GRA 2006 & FIN-PLA-2031 as they are redundant with exemptions in the Development Charges Act.</p>

Minor zoning by-laws can be delegated to Staff	The administrative burden on Council for routine and minor zoning by-law amendments such as the removal of holding provisions when conditions are fulfilled can be reduced. Delegated approval authority will allow for more efficient and streamlined method for minor zoning by-law amendments.	Approve a revised staff delegation by-law to delegate minor zoning by-law amendments including the removal of Holding provisions and zoning by-law amendments which are minor in nature to make clerical, technical, administrative, and other minor amendments to the Director of Planning.
New definition of a “parcel of urban residential land.” Land within an area of settlement where residential use, other than ancillary residential use, is permitted by by-law and which is served by municipal sewer and water services	Allows up to three (3) units per lot (i.e., up to 3 units in the primary building, or up to 2 in primary building and one in ancillary building or structure)	Approve a Zoning By-law Amendment to permit up to 3 dwelling units on a parcel of urban residential land.
Site Plan must be delegated to staff	Removal of Council and public participation in the Site Plan process	Approve a revised Site Plan Control By-law.

BACKGROUND:

To address the housing crisis and get more homes built faster, the Province has enacted a series of legislated changes to streamline development applications and reduce costs to development. The flowchart in Figure 1 below summarizes Provincial action addressed in this report to address the housing crisis.

Figure 1: Overview of legislative changes relating to housing



First, Bill 13, *Supporting People and Businesses Act, 2021*, which received royal assent on December 2, 2021, introduced amendments to the Planning Act to add a new authority to further delegate planning decisions dealing with minor amendments to zoning by-laws, such as temporary use by-laws, lifting of a holding provision or other minor zoning by-law amendments. This new authority requires a municipality to establish official plan policies specifying the criteria to be used to define by-laws that may be delegated. In addition to approval of an Official Plan amendment, modifications to the municipal delegation by-law are required. Municipalities can choose to use this tool to streamline development application timelines.

In February 2022, the Ontario Affordability Task Force released a report setting a target to build 1.5 million homes in the next 10 years. This target along with some of the report's 55 recommendations were the impetus for provincial legislation that followed.

Next, Bill 109, *More Homes for Everyone Act, 2022*, came into effect in April 2022. Bill 109 is a first step response to the Ontario Housing Affordability Task Force Report. It made changes to the Planning Act requiring municipalities to refund Zoning By-law amendment and Site Plan application fees if a decision or approval, respectively, is not reached within legislated timeframes. The new regulations for fee refunds took effect on January 1, 2023. Staff note that there is currently legislation under consideration as part of Bill 97 that would amend the effective date to July 1, 2023.

Finally, Bill 23, *More Homes Built Faster Act, 2022* came into effect in November 2022, in response to the housing supply crisis and the province's ambitious target to build 1.5 million homes within the next 10 years. Bill 23 amends nine key provincial statutes. This report addresses changes to the *Development Charges Act* related to exemptions to development charges for affordable housing projects. It also addresses changes to the Planning Act that broaden as-of-right permissions for up to three units on a property for single detached dwellings, semi-detached dwellings and street fronting townhouses and new restrictions to Site Plan control related to residential developments with 10 units or less and building elevation review.

Bill 13, Bill 109, and Bill 23 are implementing measures to address the housing crisis. With their enactment, the City of Kitchener must adjust its operations to address these legislative changes to land use planning, municipal financing, and local governance. This report provides recommendations to update policies and bylaws and provides Council with an update on staff-level process improvements in response to these new provincial directives.

REPORT:

Recent Provincial updates have made impactful changes to the Planning Act and other legislation, with the intent to bring more housing to market more quickly. In response to these changes, staff recommend amendments to the Official Plan, the Zoning By-laws, and various other by-laws and Council policies. The recommended changes work together in many instances and the discussion in this report has been separated into three key areas of change:

- enacting tools that reduce review timelines (Bill 109 and Bill 13 implementation);
- mandatory changes to deliver housing (Bill 23 implementation); and,
- staff-initiated process improvements that do not require amendments to policies or by-laws.

Enacting Tools that Reduce Review Timelines (Bill 109 and Bill 13 Implementation):

The first set of changes enact and strengthen tools to help the City reduce review timelines so that decisions can be made within the legislated timeframes. New legislation provides financial incentive to make decisions on certain application types, namely, Site Plan Approvals, and Zoning By-law amendments within legislated timelines by mandating the incremental refund of application fees.

Changes in these areas will help the City in the following ways:

- ensure applications are complete at the time they are accepted so that the 'clock' doesn't start until all supporting documentation is received;
- reducing the administrative burden on Council for routine and minor zoning by-law amendments such as the removal of holding provisions when conditions are fulfilled;
- better aligning the notice of a statutory public meeting with reporting timelines which will provide additional time for issue resolution and ensure that the report is available when notice is given; and,
- implementing as a standard practice, online public consultation, and engagement tools, including enhanced public notices.

Legislated Changes to Deliver Housing (Bill 23 Implementation):

The second category of amendments are those which have been mandated by the Province to reduce planning process. These changes include:

- no longer permitting the use of Site Plan Control for residential developments with 10 units or less on a parcel of urban residential land with limited exceptions;
- permitting up to 3 dwelling units on a parcel of urban residential land; and,
- removing the municipality's ability to approve the aesthetics or character of a building (including materials, architectural style, colour, etc.).

Staff-initiated process improvements that do not require amendments to policies or by-laws:

The final category is a report back to Council on actions initiated by staff over the past year to address development review efficiencies to streamline processes without the need for amendments to policies or by-laws.

The following sections of this report outline the various policy documents and by-laws which are proposed to be updated and have been organized into the categories as described above. Together with the proposed changes to the Official Plan and Zoning By-laws, in many cases the Planning Act and Municipal Act requires that the municipality enact an implementation by-law. The City of Kitchener has several such by-laws required or permitted by the Planning Act including the Site Plan Control By-law, Delegated Approval Authority By-law, Pre-Submission Consultation By-law, and Demolition Control By-law. Several of these City by-laws are recommended to be updated as part of this body of work. There are also policies of Council which provide Council's direction regarding certain processes, that should be updated such as the Public Participation Policy. Changes to the Official Plan, policies and by-laws are discussed in the context of each tool. Details of the proposed amendments and specific rationale can be found in the Appendices.

A. Enacting Tools to Reduce Review Timelines

This section makes recommendations in the following policies and bylaws:

- Pre-Submission Consultation – amend complete application requirements in the Official Plan.

- Delegated Approval Authority – amend Official Plan policies and the Delegated Approval Authority By-law to allow delegation of minor Zoning By-law amendments including the removal of Holding Provisions to the Director of Planning.
- Public Participation and Notice Requirements – amend policies of the Official Plan and the Public Participation Policy to permit a modified timing for notice of statutory public meeting from 20 to 10 days, and to recognize enhanced notice practices and virtual meeting options.

Pre-Submission Consultation

Pre-Submission Consultation meetings are required in advance of an applicant submitting a formal application for a Site Plan, Zoning By-law Amendment, Official Plan Amendment, Plan of Subdivision, and Plan of Vacant Land Condominium, and may be required for some Minor Variance or Consent applications. Through this process, the City and agency staff have an opportunity to review and provide early feedback on a development proposal and identify the information and materials that are required to be submitted with a development application for it to be deemed complete under the Planning Act. Requiring this information and material at the time a development application is submitted helps to ensure staff and agencies have all the information needed to review a development proposal. Once the application is complete, a decision must be made within the timeframe provided by the Planning Act (i.e., 60 days for Site Plan Approval, 90 days for Zoning By-law Amendments and 120 days for Zoning Bylaw amendments associated with an Official Plan Amendment) or portions of application fees must be returned.

The City of Kitchener has a robust Pre-Submission Consultation process. The Official Plan has contained policies requiring consultation for specified development applications since 2008, and an enacting Pre-Submission Consultation By-law was passed at that time. Through the recent Development Services Review these processes were refined and updated so that the overall customer experience was improved. The City's Pre-Submission Consultation processes ensure that new applications include all the necessary plans, reports, and studies at the time they are deemed complete. Since Bill 109 was enacted, staff have made several internal process changes that do not require Council approval or consideration, such as refinements to Records of Consultation which are issued outlining the list of information and materials that are required as part of an application.

Staff recommend minor amendments to the Official Plan to update and refine policies, and to update the list of plans and studies that may be required as part of a Complete Application. These changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale). No changes are proposed to the Pre-Submission Consultation By-law.

Delegated Approval Authority

The Planning Act prescribes the required decision-making processes and authority with respect to various types of Planning Act decisions including for Official Plan Amendments, Zoning By-law Amendments, Site Plans, Plans of Subdivision, etc. In many instances the approval authority is Council. In some instances, however, a Council may delegate their decision-making authority by enacting policies in the Official Plan and passing a by-law to delegate approval authority to staff. The City of Kitchener Council has delegated approval authority to staff for various Planning Act decisions including Site Plan Approval, Minor Modifications to Plans of Subdivision, Demolition Control and others. Bill 13 amended the

Planning Act to permit a Council to delegate approval authority to staff for minor zoning by-law amendments including the removal of Holding Provisions.

The Planning Division has identified several benefits to increasing the use of delegation:

- It frees up Council time to focus on strategic priorities.
- It frees up municipal staff time preparing detailed Council reports on routine approvals.
- It will help to avoid unnecessary delays on planning applications that implement Council-approved policies and regulations.
- It retains the ability for elected officials to provide input directly to staff (and vice versa).
- It allows elected officials to defer to judgement of professional staff for matters which are straightforward and technical in nature.
- There are potential cost and time savings for applicants that support objectives of building housing faster and cost-effectively.

This report recommends that delegated authority be granted for both removal of Holding provisions and zoning by-law amendments which are minor in nature to make clerical, technical, administrative, and other minor amendments to the Zoning By-law, as detailed below.

Holding Provisions:

First, Section 36 of the Planning Act authorizes municipalities to apply a Holding Provision to an amending zoning by-law to delay development of a site until certain and specific conditions have been met. The City's Official Plan permits the use of Holding Provisions in situations where it is necessary or desirable to zone lands for development or redevelopment in advance of the fulfillment of specific requirements and conditions, and where the details of the development or redevelopment have not yet been fully resolved. Holding Provisions may be used for purposes including: orderly staging of development; confirming adequate transportation and servicing infrastructure, and community services; mitigation of negative impacts resulting from the proximity of lands to transportation and utility corridors, incompatible land uses or any other source of nuisance or hazard to public health and welfare (commonly through the approval of a Noise Study and/or Record of Site Condition); and, to satisfy the policies of this Plan related to cultural heritage conservation, urban design, Site Plan control, and protection of the natural environment. To meet decision-making timelines of the Planning Act and to avoid mandatory fee refunds, staff anticipate more frequent application of Holding Provisions for site specific Zoning By-law Amendments so that detailed site matters can be resolved after a decision has been made on a change in land use or regulation.

Holding Provisions are applied to lands through a Zoning By-law amendment, which is approved by Council. Currently, when the conditions have been met (e.g., the required study is approved, or certain works have been completed), the Holding Provision can be removed. The removal of the Holding Provision is not appealable by anyone other than the applicant and does not require a formal public meeting or public notice other than a newspaper notice. Currently, when the conditions required by a Holding Provision have been fulfilled, an applicant must apply for a Zoning By-law amendment to remove the holding provision. When the application is received, planning staff complete a review to ensure that the condition(s) have been fulfilled to the satisfaction of the requesting City department or agency. If staff

are satisfied, a report is prepared and provided to Committee and Council recommending that a zoning by-law be passed to remove the Holding Provision. If the condition is fulfilled, the Holding Provision must be removed, and the uses permitted by the underlying zoning take effect (which were originally subject of public meetings and Council approval).

Given the administrative nature of the removal of holding provisions, staff recommend that Council delegate approval authority for the removal of Holding Provisions to the Director of Planning. The studies required by holding provisions are technical and clearance is provided by the requesting City department or agency, regardless of who has the authority to pass the by-law to remove the Holding Provision. Public notice of the removal of the Holding Provision is provided, however the decision does not require a statutory public meeting and Council has previously decided on underlying zoning permissions. Removal of the Holding Provisions simply confirms that the technical condition approved by Council has been met.

Minor Amendments:

Next, staff also recommend that Council delegate approval authority for other minor Zoning By-law amendments to the Director of Planning. Such amendments are necessary from time to time to make minor changes such as, altering language for consistency and refining language to assist with clarity in interpretation. Such changes do not impact the effect of the zoning regulations.

To delegate authority for both the removal of Holding Provisions and minor Zoning By-law amendments, the Planning Act requires that the Official Plan provide policies to specify the types of by-law amendments that may be delegated. The Planning Act also provides that Council may withdraw this authority at any time, or on a case-by-case basis. As a next step, staff will develop administrative procedures to implement a new internal process where approval authority has been delegated.

Staff recommend that new Official Plan policies are enacted delegating the approval of both removal of Holding Provisions and minor Zoning By-law amendments to the Director of Planning. These changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale). Together with the proposed amendments to the Official Plan, staff recommend that the City's Delegated Approval Authority By-law is amended as detailed in Appendix 'C'.

Public Participation and Notice Requirements

The City of Kitchener has adopted robust public participation processes that, in most cases, exceed Planning Act requirements. These were refined and updated through the Development Services Review and have been implemented by staff. As part of this body of work, staff have reviewed current public participation processes for alignment with the Public Participation Policy and legislated timelines. Changes to public participation policies and notice requirements include the following:

- To recognize the enhanced current public notice practices and virtual meetings that were initiated in recent years in the Public Participation Policy;
- To reduce notice of the statutory public meeting from 20 days to 10 days per the Alternative Notice requirements introduced through Bill 13;
- To eliminate the need for public consultation for minor zoning by-law amendments which are proposed to be delegated to the Director of Planning also in accordance with Alternative Notice Requirements; and,

- To remove public participation policies relative to Site Plan Control to align with Bill 109 timelines.

Enhanced Notice Practices and Virtual Meetings:

Public engagement is a key part of municipal decision-making around development. Through the Development Services Review, Kitchener has moved to more equity-informed citizen engagement opportunities. Changes to public engagement practices for Official Plan and Zoning By-law amendments and Plans of Subdivision include:

- Circulating all residents (occupants/renters) and property owners within 240 meters of the subject lands (Planning Act only requires 120 meters);
- Standardized, visually appealing, and easy-to-read postcards, property signs, and newspaper notifications replaced technical, text-based formats for public planning notices, which were difficult to understand and created a barrier to engagement and understanding;
- The postcard and newspaper ads provide basic information on a development application and directs the readers to the City's Development Application webpage;
- Development Applications webpage/mapping tool with current development application information; and,
- Virtual Neighbourhood Meetings for all applications.

Community response has been positive on the new, user-friendly approach to access information on development applications using an intuitive and visual map-based interface. In addition, this creates transparency and goes above and beyond Planning Act requirements by providing access to all studies, reports, and engagement opportunities related to planning applications in one location.

During the COVID-19 global pandemic, neighborhood meetings were shifted to a digital format. This proved to be an effective and efficient way to have initial engagements on development applications with the broader community. Digital engagements reduced some barriers to participation including travel time and expense as well as childcare. Digital meetings are recorded and posted on the City's website and can be watched at any time following the meeting benefiting those that could not attend as well as those that want to rewatch to gain a better understanding. A call-in number is also provided for community residents without internet access to attend the meeting. Attendance for neighbourhood meetings has remained consistent and, as a result, neighborhood meetings are now held for all development applications, whereas pre-pandemic in person engagements were utilized only for major development proposals.

According to a 2021 report released by Statistics Canada, Kitchener-Cambridge-Waterloo is tied for the second fastest growing area in Canada. This has required staff to meet and sustain a higher-than-normal level of demand in terms of development approvals. Digital neighborhood meetings provide considerable time and financial savings for engagements. Staff can deliver these engagements effectively from home in the evening outside of standard business hours when community members are available to participate. With the high volume of development applications in recent years, the virtual meeting format also reduced impacts on staff resourcing including a reduction in over-time hours and streamlined bookings (with no venue limitations and associated rental fees)

Given the need to consider development applications within prescribed timeframes or face fee refunds, Planning staff recommend that digital neighborhood meetings continue for site specific development applications. Minor amendments are proposed to the Official Plan to recognize that engagement may be electronic or in person. These changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale). Further, Planning staff recommend an amendment to Council Policy MUN-PLA-1095 (Public Participation in the Planning Process) to reflect current practices as provided in Appendix 'F'.

Site Plan Public Participation Policies:

Bill 109 requires Site Plan approval to be delegated to staff for applications made on or after July 1, 2022. Site plan approval has already been delegated to staff in the City of Kitchener, however the current Public Participation in the Planning Process Council policy outlines certain criteria when a site plan would be publicly circulated for comment. As Site Plan approval is now strictly delegated to staff and an approval must be granted within 60 days to avoid application fee refunds, Council Policy MUN-PLA-1095 should be amended to remove circulation requirements for certain site plan applications as reflected in Appendix 'F'.

Alternative Notice Measures:

The Planning Act prescribes that a notice of the statutory public meeting be provided 20 days in advance of the meeting taking place. Bill 13 amended the Planning Act to allow a Council to permit alternative notice requirements by enacting policies in the Official Plan. The City consults with the public early in the application process by circulating notice of the application, receiving comments, and holding a Neighbourhood Meeting for every Official Plan Amendment, Zoning By-law Amendment, and Subdivision application. As noted in the previous sections regarding enhanced notice practices, the public is well-informed and able to provide meaningful input into the application process, as well as ask questions and work with staff and an applicant to resolve concerns. However, due to reduced timelines for application review, staff is more limited in time following initial engagement to resolve issues before finalizing a recommendation report. Following initial public circulation of notice of the application and the neighbourhood meeting, staff work to resolve concerns of the public and any technical concerns identified by City departments or agencies. Staff must then complete a staff report to schedule the statutory public meeting. Staff recommend two instances where adopting alternative notice requirements would be beneficial and describe the rationale and purpose below:

1. To reduce notice of the statutory public meeting from 20 days to 10 days

The Planning Act requires that notice of a Statutory Public Meeting be given 20 days in advance of the meeting. In the City of Kitchener, as Statutory Public Meetings are typically held on a Monday, this requires that notices appear in the newspaper three Fridays before the meeting. However, staff reports, which contain recommendations are not publicly available until 10 days before the meeting. Staff recommends that Council approve an Official Plan policy which would permit that notice of the Statutory Public Meeting be provided at least 10 days prior to the meeting, rather than 20 days. This would ensure that the staff report and recommendations are available when the meeting is advertised. A postcard advising of the Statutory Public Meeting will continue to be mailed to people who participated in the process and those living or

owning property within 240 metres of the subject site, also about 10 days in advance of the meeting. Staff is of the opinion that because of the robust public consultation in practice with proposed updates to the Public Participation Policy, interested members of the public will be engaged in advance of the Statutory Public Meeting, and that 10 days is sufficient notice.

2. To eliminate the need for public consultation for minor amendments which are proposed to be delegated to the Director of Planning.

Public consultation is not required for the removal of a Holding Provision, however would be required for other minor amendments. Minor amendments that are clerical or administrative and which assist with consistency and clarity in interpretation do not have an impact to the effect of zoning regulations. Staff recommend that Council approve Official Plan policies which would eliminate the need for public consultation for this scope of amendment.

Staff recommend that new Official Plan policies are adopted providing for alternative notice requirements, as provided for by the Planning Act. These changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale). Corresponding changes are proposed to the Public Participation Policy in Appendix 'F'.

B. Legislated Changes to Deliver Housing

This section makes recommendations in the following policies and bylaws to reflect changes associated with Bill 23:

- Additional Dwelling Units (3 units per lot) – amend the Official Plan and Zoning By-laws to align with permissions for Additional Dwelling Units.
- No Site Plan Control for Development with 10 Units or Less – amend Official Plan policies, the Site Plan Control By-law and the Zoning By-laws for regulations related to residential development with 10 dwelling units or less on a parcel of land that are now exempt from Site Plan Control.
- Urban Design (Exterior Design) – amend Official Plan policies to respond to reduced review authority for building elevation review through Site Plan Control.
- Removal of Development Charge Deferral and Development Charge Waiver policies for Affordable Housing – repeal policies which are redundant with exemptions in the Development Charges Act.

Additional Dwelling Units (3 units per lot)

Bill 23 made changes to Section 16(3) and 35.1 of the Planning Act. Official Plans and Zoning By-laws now cannot contain policies and regulations that have the effect of prohibiting the use of up to three residential units in association with a single-detached house, a semi-detached house, or a street townhouse on a parcel of urban residential land. The changes make it mandatory for municipalities to permit up to three residential units in association with a single-detached house, a semi-detached house, or a street townhouse on land where residential use other than ancillary residential use is permitted. Performance standards may still be in place except those related to requiring more than one parking space for each additional unit and regulating the minimum floor area of each additional unit.

Kitchener's Official Plan already has policies in place that support attached and detached additional dwelling units. Staff recommend they are updated to align with the Planning Act requirements to permit up to three dwelling units on a lot, and the matters which may be considered in implementing Zoning By-law regulations including requirements for parking, regulations which help ensure compatibility such as heights and massing, setbacks, landscape buffers and pedestrian access. Further, to comply with legislated requirements, staff recommend updates to Area Specific or Site-Specific policies and associated Zoning By-law provisions where additional dwelling units were previously prohibited, and an update to the definition of Low-Rise Residential Land Uses to include additional dwelling units. Official Plan policy changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale).

Kitchener's Zoning By-laws currently permit additional residential units to some capacity. The proposed changes to the Zoning By-laws align with the recent Planning Act mandates. Key changes to the Zoning By-laws include:

- Permitting up to three residential units where a single-detached dwelling, a semi-detached dwelling, or a street townhouse dwelling is a permitted use. This includes permitting attached and detached Additional Dwelling Units in Commercial Residential, Mixed Use and Institutional zones in addition to the Residential zones of Zoning By-law 85-1.
- Amending site specific provisions (223, 226, 232, 253) of Zoning By-law 2019-051 and special use provisions (319, 352, 470) of Zoning By-law 85-1 that have the effect of prohibiting up to three residential units.
- Enabling up to three parking spaces to be arranged in tandem on a driveway.
- Enabling three-unit buildings to be purpose-built by deleting regulations that limit two additional dwelling units to existing buildings and updating the definition of multiple dwelling to a building that contains four or more dwelling units. This also includes clarifying that three-unit buildings will be permitted where a single-detached dwelling with two additional dwelling units (attached) is permitted.

No Site Plan Control for Development with 10 Units or Less and Changes to Exterior Design Review through Site Plan

Bill 23 made changes to Section 41 of the Planning Act which effect how municipalities can exercise site plan control. The changes include exclusion of all aspects of site plan control for residential development up to 10 units except in certain cases, and removal of exterior design consideration from site plan control for all developments. To address these changes, staff recommend changes to the Official Plan, Site Plan Control By-law and Zoning By-laws.

Official Plan Amendment:

First, in accordance with legislated changes staff recommends that Official Plan policies be updated to comply with the new regulations. Specifically, staff recommend updates to the policies which provide for a Site Plan Control Area, and outlines what types of development are subject of Site Plan Control, and what may be considered through site plan control to ensure consistency with the Planning Act.

In addition with respect to the enacted provisions that remove the consideration of exterior design from Site Plan Control, an applicant may be required to prepare site specific Urban Design Reports, Briefs, Guidelines or Scorecard, and staff will continue to review development proposals regarding all matters of urban design that continue to be in

effect. The outcome of these changes is that staff can no longer approve how a building looks in terms of architectural styles, aesthetics, materials, color, or appearance. Staff will continue to provide feedback and comments to applicants through the Site Plan review process and will continue to require urban design review and adherence to urban design policies and guidelines through other parts of the development review process, such as through Official Plan and Zoning By-law amendments.

Staff recommend amendments to Official Plan policies to ensure compliance with the new Planning Act provisions, while maintaining and updating policies that require consideration of urban design throughout the development process. Staff recommend that where relevant, Official Plan policies be updated to include the Urban Design Scorecard, as a site-specific urban design evaluation tool, and recommend that a new definition of Urban Design Scorecard be added. Official Plan policy changes are detailed and described in Appendix 'A1' (Proposed Official Plan Amendment) and Appendix 'A2' (Proposed Official Plan Amendment with Rationale).

Site Plan Control By-law Update (Municipal Code):

Staff recommend repealing and replacing Chapter 683 of the Municipal Code (Site Plan Control) with the draft chapter attached as Appendix 'D' to this report. To ensure consistency with the Planning Act, changes are proposed to reference language in the Planning Act. To limit the updates that may be required to the Municipal Code, references to the Planning Act will not include specific sections of the Act, to ensure alignment with Provincial legislation which may change from time-to-time allowing regulations in the Planning Act to be implemented without further updates. While now required by Bill 109, Kitchener has previously delegated site plan approval to staff. The definition of "development" is proposed to be removed from Chapter 683 and instead referring to the Planning Act. Additionally, minor edits were made to reflect current staff titles.

Zoning By-law Amendments:

Proposed changes to the Zoning By-laws in relation to changes to site plan control are detailed in Appendices 'B1', 'B2' and 'B3'. Key changes include:

- Introducing regulations to address design and site functionality elements for residential development with less than 10 units where a site plan application is no longer required. At this time, the regulations are limited to:
 - a minimum street line façade openings of 20% including at least one pedestrian entrance to the building;
 - a minimum of 20% of the front yard to be landscaped excluding hard surface landscape elements such as walkways, patios, decks, or pathways; and,
 - a minimum driveway width of 2.6 metres, except where the driveway is immediately adjacent to a building or structure in which case the minimum driveway width will be 3.0 metres.
- Enabling staff to undertake zoning checks through Zoning Occupancy Certificates where a site plan application can no longer be required, including any development where the resultant number of units are equal to or less than 10 and does not contain a non-residential use except permitted home occupation/business use.
- Updating the definition of a parking lot to include a minimum of one drive aisle and adding regulations associated with parking lots for a development not requiring site plan approval. The regulations are limited to a 1.5 metre setback from the side and rear lot lines for the parking lot, and a minimum drive aisle width of 6 metres.

Excluding these types of developments and matters from Site Plan Control has implications on staff's ability to review and mitigate matters related to parking lot functionality, grading (property drainage), building design and appearance, and new servicing. Staff are recommending zoning regulations that support safe, functional, and healthy projects while maintaining a scope that meets the objectives of provincial legislation.

Finally, with the exclusion of Site Plan control for residential development up to 10 units, the Building Division is also evaluating the Building By-law in coordination with other development review staff to determine amendments that may be needed such as applying the Emergency Services Policy (e.g., fire routes). Building staff will be reporting back to Council in August with proposed changes to the Building By-law.

Demolition Control By-law

Staff recommend amending the Demolition Control By-law to provide greater clarity to confirm that a Demolition Control Area is inclusive of properties zoned RES-1 through RES-5. The current by-law was approved prior to the approval of Zoning By-law 2019-051 and therefore does not recognize the RES zone nomenclature. This amendment is technical in nature and does not change the intent of the Demolition Control By-law. Refer to Appendix 'E' for the proposed Demolition Control By-law amendment.

Removal of Development Charge Deferral and Development Charge Waiver policies for Affordable Housing"

In response to public engagement during the 2022 budget process, Council made a capital investment of \$2,000,000 towards an Affordable Housing Reserve Fund. Council subsequently approved a Development Charges (DC) waiver policy using this fund to pay 100% of DCs for eligible non-profit developments.

Due to recent changes to the Development Charges Act through Bill 23, non-profit housing developments are now exempt from paying Development Charges (DCs). As a result, Council Policies FIN-GRA-2006 and FIN-PLA-2031, that provided financial incentives for non-profit affordable housing developments by deferring or waiving DCs for eligible developments, have become redundant. Table 2 below summarizes the purpose of these policies and the results they have had for supporting non-profit affordable housing developments since their inception.

Table 2: Development Charges (DCs) Council Related Policies

Council Policy	Purpose	Results
FIN-GRA-2006	Allows deferred payment of City DCs for eligible non-profit rental housing developments from the time of building permit to the time of occupancy	10 affordable housing developments 261 units \$1,900,000 DCs deferred
FIN-PLA-2031	Waives City DCs for eligible non-profit housing developments	2 affordable housing developments 86 units \$727,000 DCs waived

Staff recommend that these policies be repealed given that they are no longer necessary. These policies are attached in Appendix 'G'.

C. Staff-initiated process improvements that do not require amendments to policies or by-laws

Bill 109 Action Plan Update

The intent of Bill 109 is to reduce development application timelines by adding fiscal consequences of having to refund applicants if legislated timelines are not met. At the time that this Bill was introduced, Council requested that staff report back on steps taken to address the mandated timelines. As a result of Bill 109, the Planning Division evaluated the development application review processes for Official Plan and Zoning Bylaw amendments and Site Plan applications with the goal of achieving timelines to avoid or minimize mandatory refunds. The current approach was assessed, and an implementation action plan was created to streamline and improve processes. Phase 1 of these process improvements was undertaken at a staff level and are now operational. The action plan takes a comprehensive yet phased approach to implementing Bill 109.

Example of Phase 1 process improvements:

- End-to-end file management tool to aid workload management.
- Standardized template for planning reports.
- Post-circulation meetings with staff and agencies for Official Plan and Zoning by-law amendment applications.
- Changes to conditional approval for Site Plan applications including procedure updates and the use of red-line drawings.

This report (DSD 2023-239) is part of Phase 2 with the process changes identified in the previous sections to be implemented as the decision comes into effect.

Phase 2 process improvements:

- Implementation of Bill 13, Bill 109, Bill 23 – Council Report:
 - Official Plan Amendments (OPAs) to support the legislative timelines.
 - Zoning By-law Amendments (ZBAs) to support the legislative timelines.
 - By-law and policy updates to support the legislative timelines.
- Staff training and established procedures
- Staff to track timelines and fee refunds, where applicable

PLANNING CONCLUSIONS:

Updates to Provincial legislation have made impactful changes to the Planning Act and other legislation, with the objective to bring more housing to market more quickly. In response to these changes, staff are recommending changes to the following:

- Official Plan (2014),
- Zoning By-law (By-law 85-1),
- Zoning By-law (By-law 2019-051),
- Delegated Approval By-law (By-law 2012-069),
- Site Plan Control By-law (By-law 2012-070),
- Demolition Control By-law (By-law 2013-093),
- Council Policy MUN-PLA-1095 Public Participation in the Planning Process,

- Council Policy FIN-GRA-2006 Development Charges Payment for Affordable Rental Housing, and
- Council Policy FIN- PLA-2031 Affordable Housing Development Charges Waiver Policy.

Staff is of the opinion that the proposed amendments to the Council Policies, City By-laws, and the Official Plan Amendment and Zoning By-law Amendments are consistent with and conform to the Planning Act, Provincial Policy Statement (2020), the Places to Grow Act (2005) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) and the Regional Official Plan (2010) and represents good planning.

CITY & AGENCY COMMENTS:

Circulation of the proposed Official Plan and Zoning By-law Amendments was undertaken in April 2023 to all applicable City departments and other review authorities. No significant concerns were identified by any commenting City department or agency and any necessary revisions and updates were made based on initial feedback. Copies of the comments are found in Appendix ‘H’ of this report. An overview of the identified concerns and staff responses are found below in Table 3.

Table 3: Summary of Agency Comments and Staff Response

Initial Feedback Received	Commenting Agency/Dept	Response
Minor suggested revisions to proposed Official Plan policies. Transportation team were not supportive of the addition of "required" to parking lot definition or a 2.6 metre driveway width.	City of Kitchener Transportation	Incorporated feedback re: suggested revisions to Official Plan, as appropriate. The word “required” from the proposed ‘parking lot’ definition is now removed and ‘and a minimum of one drive aisle’ is added. Consensus to maintain 2.6 metres driveway width where no building/encroachments exist and minimum driveway width of 3 metres, otherwise.
No specific concerns relative to proposed policy and zoning by-law amendments but hopes to collaborate more with City on design of schools and including schools as part of “complete communities”. Location of school sites – more flexibility would be beneficial.	Waterloo Catholic District School Board	Staff acknowledged their response.
No specific concerns relative to proposed policy and zoning	Waterloo Region District School Board	Staff acknowledged their response.

<p>by-law amendments but general concerns of Bill 23 regarding calculation of student yields and integrity of long-range enrolment projections, especially with regards to assessing ADUs and multiple dwelling units. Challenges with the current funding model for school planning. Hopes to collaborate with City to mitigate challenges relating to growth.</p>		
<p>Minor suggested revisions to proposed Official Plan policies.</p>	<p>City of Kitchener Parks & Cemeteries</p>	<p>Incorporated feedback re: suggested revisions to proposed Official Plan policies, as appropriate.</p>
<p>High level consultation with planning team to get feedback on the approach to Bill 23 implementation.</p>	<p>City of Kitchener Planning – presentation to planning staff meeting on March 3, 2023.</p>	<p>Follow-up meeting and further consultations with zoning review staff and policy staff.</p>
<p>Feedback was generally positive with no major concerns. Information was circulated to the group with a 2-week deadline for comments. No comments were received.</p>	<p>Kitchener Development Liaison Committee - presentation to KDLC on March 10, 2023.</p>	<p>No response required.</p>
<p>No specific concerns were identified, but general help requested to understand changes impacting building.</p>	<p>Building - Presentation to Building Management Team on May 3, 2023.</p>	<p>Planning staff will support the team with change management as changes to Planning Act exempt residential units of 10 or less from Site Plan control, which has impacts on building review.</p>

COMMUNITY INPUT & STAFF RESPONSES:

WHAT WE HEARD



Notice of the applications and Community meeting was posted to the City’s website and in The Record March 10, 2023.



No Comments were received from community members.



A City-led Community Meeting was held on March 29, 2023, and seven (7) different users logged on. Staff addressed comments asked during the meeting and did not receive any follow up submissions from the community.

An overview of the identified concerns and staff responses are found below in Table 4.

Table 4: Overview of concerns or questions and staff responses from Community Meeting

<i>Concern or Question</i>	<i>Response</i>
That ADUs may be used for short-term rentals	Licensing staff are currently reviewing shared accommodations and short-term rentals. Results will be forthcoming under separate cover.
Provision of sufficient green space in core areas	Growing Together work will be addressing this to find appropriate balance for green space. For parking lots in the rear lot, we are proposing rear yard setbacks that would provide soil volume requirements and landscaping.
Are there minimum property frontage requirements for ADUs?	The Zoning By-laws have performance standards in place including a minimum lot width requirement of 13.1 metres for two ADUs (attached) or one ADU (detached).
If notice period is shortened, can we notify the public of planning applications earlier?	As soon as an application comes in, staff initiate notification to the public through a newspaper ad, notice sign, posting info on our website, and through postcards. Digital format and links for neighbourhood meetings will be provided and notice will be given early in the process.

Are there changes to committee of adjustment - notice or process?	No changes to timelines and notification. Bill 23 amended the Planning Act such that a third party can no longer appeal decision made by the Committee of Adjustment. Only applicants and prescribed agencies outlined by the Planning Act can appeal.
Changes to Urban Design	New regulations limit the City's ability to enforce urban design guidelines for building design elements such as materials and colours that we would previously review through Site Plan approval, but the City can continue to review zoning aspects of building elevations.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendations have no impact on the Capital Budget.

Operating Budget – Bill 109 introduced a requirement for a municipality to refund zoning by-law amendment and site plan application fees if a decision is not made within a prescribed timeframe as outlined below in Table 5.

Table 5: Fee refunds summary for Site Plan and Zoning By-law amendment applications

	No Refund	50% Refund	75% Refund	100% Refund
Zoning By-law Amendment	Decision made by day 90	Decision made day 91 to 149	Decision made day 150 to 209	Decision made day 210 or later
Zoning By-law Amendment associated with an Official Plan Amendment	Decision made by day 120	Decision made day 121 to 179	Decision made day 180 to 239	Decision made day 240 or later
Site Plan	Approval by day 60	Approval day 61 to 89	Approval day 90 to 119	Approval day 120 or later

The Planning Division does not have a funding source or budget for refunding planning application fees. Rather, amendments to processes outlined in this report are recommended to support streamlined approval times for development applications, reduce the instances where fee refunds will have to be issued, and reduce the potential impact to the operating budget.

Planning staff will continue to report potential financial implications on each application when the staff report for the application is presented to the Planning and Strategic Initiatives Committee meeting.

For the period of January to May 2023, the City has lost just over \$2M in development charges (DC) revenues due to Bill 23. If this trend were to continue over the entire year, the City would lose a total of just under \$5M in DC revenues in 2023.

Based on an average of 64 calculations completed in 2023 to determine post-Bill 23 parkland requirements, on average the amount of parkland dedication collection has been reduced by 71.9% compared to pre-Bill 23 requirements.

Staff are requesting an additional two FTEs within the Planning Division to increase capacity for the review of development applications. These FTEs will be paid with revenue from development applications.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the Council / Committee meeting. Following the initial circulation referenced below, notice of the statutory public meeting was circulated to all residents and property owners responding to the preliminary circulation. Notice of the Statutory Public Meeting was also posted in The Record on May 26, 2023 (a copy of the Notice may be found in Appendix ‘I’).

CONSULT – Notice of the proposed Official Plan Amendment and Zoning By-law Amendment and notice of the Community Meeting were posted to the City’s website and posted in The Record on March 10, 2023. In response to this circulation, staff received did not receive written responses from the public. Seven participants attended the Community Meeting held on March 29, 2023. Proposed amendments were presented to the Kitchener Development Liaison Committee on March 10, 2023.

PREVIOUS REPORTS/AUTHORITIES:

- *Municipal Act, 2001*
- *Planning Act, 1990*
- *Bill 109, More Homes for Everyone Act, 2022*
- *Bill 13, Supporting People and Businesses Act, 2021*
- *Bill 23, More Homes Built Faster Act, 2022*
- *DSD-2022–192 titled “Province of Ontario More Homes for Everyone Plan (Bill 109)” and DSD-2022-199 titled “Addendum Report to DSD-2022-192 Province of Ontario More Homes for Everyone Plan (Bill 109)”*
- *DSD-2022–501 titled “Bill 23 More Homes Built Faster Act - Kitchener Comments”*

REVIEWED BY: Tina Malone-Wright – Interim Manager of Development Review, Planning Division

APPROVED BY: Justin Readman - General Manager, Development Services

ATTACHMENTS:

Appendix A1 - Proposed Official Plan Amendment

- Appendix A2 - Proposed Official Plan Amendment Rationale
- Appendix B1 - Proposed Zoning By-law 85-1 Amendment
- Appendix B2 - Proposed Zoning By-law 2019-051 Amendment
- Appendix B3 - Proposed Zoning By-law Amendment Details and Rationale
- Appendix C - Proposed Amendment to the City of Kitchener Delegated Approval Authority By-law
- Appendix D - Proposed Amendment to the City of Kitchener Site Plan Control By-law
- Appendix E - Proposed Amendment to the City of Kitchener Demolition Control By-law
- Appendix F - Proposed Amendment to Policy MUN-PLA-1095 - Public Participation in the Planning Process
- Appendix G - FIN-GRA-2006 - Development Charges Payment for Affordable Rental Housing and FIN-PLA-2031 - Affordable Housing Development Charges Waiver Policy
- Appendix H - City and Agency Circulation Comments
- Appendix I - Newspaper Notice - Notice of Statutory Public Meeting