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| Subject: | Parkland Dedication and Cash in Lieu of Parkland Review |
| To: | Committee of the Whole – Planning & Economic Development |
| From: | Planning and Development Department |

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| Report Number: | PD-35-23 |
| Wards Affected: | All |
| Date to Committee: | October 4, 2023 |
| Date to Council: | October 23, 2023 |

Recommendation:

Receive and file Report PD-35-23 Parkland Dedication and Cash in Lieu of Parkland Review; and

Planning and Development Staff be directed to undertake consultation regarding the use of alternative parkland dedication rates and cash in lieu of parkland to address the legislative requirements of the *Planning Act*, as amended by Bill 23.

Purpose:

The purpose of this report is to provide background information to Committee and Council regarding the legislative changes to the parkland dedication and cash in lieu of parkland dedication provisions in the *Planning Act* resulting from the approval of Bill 23, *More Homes Built Faster Act, 2022*. This report highlights the proposed amendments to existing policies, and the new policies required to implement the changes to the *Planning Act*. They include:

- Amendments to the Official Plan policies;
- Potential updates to the Parks, Recreation and Culture Master Plan;
- A new Parkland Dedication and Cash in Lieu of Parkland By-law; and
- A new Parkland Dedication and Cash in Lieu of Parkland Policy.

Background:

Bill 23

On Oct. 25, 2022, the Province introduced Bill 23, *More Homes Built Faster Act, 2022* which included changes to the land use approvals system in the province, with the goal

of facilitating the construction of 1.5 million new homes by 2031. Bill 23 received Royal Assent by the Province on Nov. 28, 2022. Bill 23 included amendments to ten different statutes including changes to the *Planning Act*. The full scope of the legislative changes included in Bill 23 were the subject of a Report AD-17-22 which was presented to Council on Dec. 5, 2022.

Bill 23 is a follow up to previous provincial plans to address housing policy. In May 2019, the Province released its document entitled: *More Homes, More Choice: Ontario's Housing Supply Action Plan* which focused on speeding up the development approvals process, addressing the costs of building new homes, making it easier to build diverse types of homes, making it easier to build rental housing and encouraging new housing innovation. That Plan was followed up by the *More Homes, More Choice Act, 2019* and the *COVID 19 Economic Recovery Act 2020*, which amended the Planning Act and the Development Charges Act (DCA).

On Dec. 6, 2021, the Province established the Ontario Housing Affordability Task Force whose mandate was to identify ways to increase the supply of market rental and ownership housing, increase housing supply and reduce the timeframe for development approvals. On Feb. 8, 2022, the Task Force released their report which included 55 recommendations. On Mar. 30, 2022, the province released its *More Homes for Everyone Plan* which included Bill 109, an *Act* to amend various statutes with respect to housing, development and various other matters. Although Bill 109, which was given Royal Assent on Apr. 14, 2022, included several legislative changes, it did not include the full scope of recommendations that were included in the report by Ontario Housing Affordability Task Force. On Apr. 25, 2022 Staff presented Report AD-09-22 which provided a summary of the More Homes for Everyone Plan, and Bill 109. AD-09-22 was approved by Council on May 2, 2022.

Report:

As outlined in this report, Bill 23 included amendments to Sections 42, 51.1 and 53 of the *Planning Act* relating to parkland dedication and cash in lieu of parkland dedication. Parkland dedication is a tool used by municipalities to acquire land for parks and/or provide funding for new parks and recreational facilities as the Town continues to grow. Parks are critical to support a healthy community. As the Town continues to grow, so does the pressure on Town parks. If the Town does not continue to expand and upgrade its parks, there will be an overall deficiency in parkland as the existing park system cannot support the increased growth anticipated in the community.

This report provides a synopsis of the changes to Sections 42, 51.1 and 53 as well as a summary of the existing Town policies that will need to be amended, and the new policies that will need to be established to implement the changes of those sections of the *Planning Act*.

The Town has retained Watson & Associates Economists Ltd. to provide professional financial advice, legislation interpretation, guidance, and support for the amendments to the Official Plan policies, potential updates to the Parks, Recreation and Culture Master

Plan, a new Parkland Dedication and Cash in Lieu of Parkland By-law and a new Parkland Dedication and Cash in Lieu of Parkland Policy.

Sections 42, 51.1 and 53 of the Planning Act

Section 42 of the *Planning Act* directs municipalities with respect to the conveyance of land for parks or other public recreational purposes as part of the approval of a development application. The developer's contribution can be in the form of a land conveyance to the Town for the development of a park and/or the payment of cash in lieu of land to be used to acquire land for or to construct parks and other recreational facilities.

Recent amendments to Section 42 of the *Planning Act* now provides an exemption from parkland dedication requirements for some types of residential redevelopment. Section 42 (1.1) which will come into effect upon proclamation by the Lieutenant Governor, exempts affordable residential units and attainable residential units within a development (as defined in subsection 4.4 (1) of the *Development Charges Act, 1997* or residential units described in subsection 4.3 (2) of that *Act* from the requirement to dedicate lands and/or the payment of cash in lieu of parkland dedication. Section 42 (1.2) exempts non-profit housing development as defined in subsection 4.2 (1) of the *Development Charges Act, 1997*. The types of residential development that are exempt, and the effective date of the exemption is detailed in Table 1.

Table 1
Exemptions from Parkland Dedication and Cash in Lieu Payments

| Type of Development | In Force Date |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <ul style="list-style-type: none"> • <u>Additional residential units</u> in a single detached, semi-detached or rowhouse dwelling and/or on lands containing a single detached, semi-detached or rowhouse dwelling • Includes up to 2 additional residential units per lot (up to 1 additional unit in the main building and 1 additional unit in an accessory building or up to 2 additional units in the main building) | Nov. 28, 2022 |
| <ul style="list-style-type: none"> • <u>Affordable and attainable housing units</u> within the development • 'Affordable' is generally defined as being priced at no greater than 80% of the average price/rent • 'Attainable' housing category excludes affordable and rental units • Information bulletins to be provided by the Province to determine the threshold for affordable rental, affordable ownership, and attainable housing units • Affordable ownership and rental units to be maintained as affordable for a minimum of 25 years via an agreement with the municipality • Attainable housing to be sold to the first purchaser (at arm's length) at an attainable purchase price. The municipality can require an agreement to ensure it remains attainable | TBD |

| Type of Development | In Force Date |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <ul style="list-style-type: none"> • <u>Inclusionary zoning units</u> (not applicable within the Town) • Total number of units required to be affordable is limited to 5% of a development for a maximum period of 25 years, as part of inclusionary zoning | TBD |
| <ul style="list-style-type: none"> • <u>Non-Profit Housing</u> • The definition of non-profit housing development includes non-profit housing co-operatives | Nov. 28, 2022 |

In addition to the exemptions listed in Table 1, the amendments to Section 42 also provide for:

- Reductions to the alternative parkland dedication rate in Section 42 (3) from 1 ha/300 residential units to 1 ha/600 new residential units. The residential unit types listed in Table 1 are excluded from the total number of units;
- Reduction to the cash in lieu of parkland rate from 1 ha/500 units to 1ha/1,000 units;
- Under Section 42 (3.3) parkland dedication and cash in lieu of parkland is now capped as follows:
 - If the land is 5 ha or less in area, a maximum of 10% of the land or the value of the land; and
 - If the land is greater than 5 ha in area, 15% of the land or the value of the land;
- The parkland dedication rates are frozen as of the date that a zoning by-law amendment or site plan application is filed, in effect for 2 years following the date of the approval of an application, instead of the day before a building permit is issued;
- Parkland dedication is only to be applied to new units created;
- Parkland could include, part of an abutting parcel, lands subject to an easement, lands which are encumbered by below grade infrastructure, or privately owned public space (POPS). Any decision to refuse to accept these types of lands is subject to an appeal to the Ontario Land Tribunal (OLT). This change will come into effect upon proclamation by the Lieutenant Governor;
- Municipalities are required to spend or allocate at least 60% of their parkland reserve balance at the start of each year; and
- A parks plan, such as a Parks, Recreation and Culture Master Plan (PRCMP), is required before Council approves a parkland dedication by-law.

Section 42 (1) of the *Planning Act* provides that as a condition of development or redevelopment of land, a municipality may, by by-law require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2% and in all other cases 5% of the land to be conveyed to the municipality for park or other public recreational purposes.

Section 42 sets out provisions for the use of alternative parkland dedication rates. Before passing any by-law which includes the alternative parkland dedication rates under Section 42 (3), the Town is still required to:

- Consult with such persons and public bodies that the municipality considers appropriate;
- Include policies in its Official Plan that contain specific policies dealing with the provisions of lands for parks or other public recreational purposes and the use of the alternative requirement; and
- Prepare and make available to the public a parks plan (PRCMP) that examines the need for parkland in the municipality. Section 42 (4.2) requires that the preparation of a parks plan include consultation with all school boards and persons or public bodies that the municipality considers appropriate.

Where any by-law contains alternative parkland dedication requirements, the municipality must provide notice of its passing and the approval by Council is appealable to OLT.

Section 42 (4.31) (not yet in effect), provides that an owner of land proposing development or redevelopment, may at any time before a building permit is issued for the development, identify land for conveyance to the municipality for parks and recreational purposes that is:

- Part of an abutting parcel; or
- Subject to an easement or other restriction (encumbered land such as privately owned public space (POPS)); or
- Encumbered by below grade infrastructure; or
- Other interest in land which is sufficient to allow the land to be used for parks or other public recreational purposes.

Should the municipality accept the conveyance of an interest in the lands in Section 42 (4.31), the municipality may require the developer to enter into an agreement with the municipality that provides for the use of the land for park or other public recreational purposes. The agreement may be registered on the title of the lands. Where the municipality refuses to accept land in accordance with Section 42 (4.31) the municipal decision is subject to appeal to the OLT.

Where the municipality accepts cash in lieu of parkland dedication, Section 42 (6) still requires the payment to be based on the value of the land required to be conveyed. The cash in lieu payment is in the case of land proposed for development or redevelopment for commercial or industrial purposes, two percent and in all other cases five percent of the value of the land be conveyed to the municipality for park or other public recreational purposes.

Where the municipality enacts a by-law under Section 42 (3) which includes the alternative parkland dedication rates, the cash in lieu payment is based on a rate of 1 ha/1,000 net residential units.

Section 42 (2.1) stipulates that the amount of the cash in lieu payment is to be based on the value of the land at the time of the approval of the site plan application or the approval of an amendment to the Zoning By-law. Where the lands are not subject to site plan approval or an amendment to the Zoning By-law, Section 42 (6.4) still requires that the value of the land be determined as of the day before the day the building permit is issued in respect of the development or redevelopment, or if more than one building permit is required, as of the day before the day the first permit is issued. Section 42 (7) stipulates that if land is obtained through a plan of subdivision under Section 51.1 or consent under Section 53, no additional conveyance or payment may be required by the municipality unless the density is increased, or land originally proposed for commercial or industrial purposes is now proposed to be redeveloped for other purposes. This means that parkland dedication or cash in lieu for residential purposes can only be required once, not for each type of planning application, and it may only be increased if the density of the development is increased. For commercial and industrial where initially the 2% rate is applied and the lands are converted to a residential use, the increase or difference in the parkland rate can be applied.

Section 42 (10) still provides that in the event that the owner does not agree with the value of the cash in lieu payment, the owner may file an appeal with the OLT.

Section 42 (15) requires that all funds collected for cash in lieu of parkland dedication must still be put into a special fund and may only be used for the acquisition of lands for park or other public recreational purposes, including the construction, improvement and repair of buildings and the acquisition of machinery for park or other recreational purposes. Beginning in 2023 and each year after, Section 42 (16.1) requires that the municipality spend or allocate at least 60% of the funds in the cash in lieu fund. As an example, the allocation of funds can be set out in a ten-year capital budget. Section 42 (17) requires that the municipality provide the prescribed reports and information regarding the cash in lieu fund.

Existing Parkland By-law and Policy

The Town's Parkland and Cash in Lieu of Parkland By-law No. 96-81 requires the dedication of land for parks purposes or alternatively a cash in lieu of parkland payment as a condition of the development or redevelopment of lands for residential and non-residential purposes. By-law No. 96-81 was approved by Council on Aug. 16, 1996. The implementing Parkland Dedication/Acquisition and Cash in Lieu of the Dedication of Lands for Parks Policy which sets out the process for determining parkland dedication and/or cash in lieu was updated in 2016 to address minor administrative changes. However, there has not been a comprehensive review of either the 1996 by-law or the 2016 policy.

Recent amendments to the *Planning Act* require that all municipalities with parkland dedication by-laws update their by-laws to comply with the current legislation as well as

to use the alternative parkland dedication and cash in lieu of parkland dedication provisions.

Official Plan Policies

The Parks and Recreation policies in the 2014 Official Plan contains policies regarding the dedication of land and the acceptance of cash in lieu for parks and other public recreational purposes that reflected the provisions of the *Planning Act* that were in effect at the time the Official Plan was adopted.

Section 3.6.4 € through (f) sets out the following policies for the dedication of land or the acceptance of cash in lieu of parkland and it sets out criteria for the acceptance of parkland.

- (e) *The dedication of land or the acceptance of cash-in-lieu of land dedication for park purposes or other public recreation purposes required in the case of development or redevelopment shall be in accordance with the following requirements:*
 - (i) *For commercial and industrial purposes:*
 - (a) *The conveyance of 2% of the land being developed or redeveloped, pursuant to Section 42(1) of the Planning Act, as amended, or any successor thereto;*
 - (b) *The payment of money equal to the value of the land required to be conveyed in Section 3.6.4(e)(i)(a). The value of the land shall be determined as of the day before the day the building permit is issued in respect of the development or redevelopment or, where more than one building permit is required for the development or redevelopment, as of the day before the day the first permit is issued, pursuant to Section 42(6) of the Planning Act, as amended, or any successor thereto.*
 - (ii) *For all other purposes:*
 - (a) *The conveyance of 5% of the land being developed or redeveloped, pursuant to Section 42(1) of the Planning Act, as amended, or any successor thereto;*
 - (b) *The conveyance of land at a rate of one (1) hectare for each three hundred (300) dwelling units proposed, pursuant to Section 42(3) of the Planning Act, as amended, or any successor thereto; or*
 - (c) *The payment of money equal to the value of land required to be conveyed in Section 3.6.4(e)(ii)(a) or 3.6.4(e)(ii)(b). The value of the lands shall be determined as of the day before the day the building permit is issued in respect of the development or redevelopment or, where more than one building permit is required for the development or redevelopment, as of the day before the day the first permit is issued, pursuant to Section 42(6) of the Planning Act, as amended, or any successor thereto.*

- (f) *To ensure that parkland dedications are of an acceptable quality, all sites dedicated as parkland must be accepted by the Town and satisfy the following:*
- (i) *Be relatively level and not required for drainage purposes, nor contain lands susceptible to flooding, have steep valley slopes or other physical features which are unsuitable for open space/park development;*
 - (ii) *Have good drainage characteristics;*
 - (iii) *Be centrally located within a neighbourhood or community context to provide convenient vehicular and pedestrian access;*
 - (iv) *Provide a reasonable park configuration to accommodate the dimensions and shape of large playing fields;*
 - (v) *Be visually prominent within the development;*
 - (vi) *Be provided with basic service requirements;*
 - (vii) *Be developed in accordance with the Town parkland standards;*
 - (viii) *Lands not satisfying all of these criteria may be deemed acceptable if they are important for achieving an identified trail connection. Dedication credits may be adjusted based on the relative value of the lands assessed according to the above criteria; and*
 - (ix) *Lands within any natural heritage designation and/or which have been identified as hazard lands shall not be considered as part of the required minimum dedication of parkland pursuant to this section of the Plan.*

The changes to Sections 42, 51.1 and 53 will require an amendment to the Official Plan. Although the Official Plan does contain alternative requirements for the dedication of land, they do not align with the current provisions in the *Planning Act*. The Official Plan sets out criteria for the acceptance of land for parks purposes, but it does not address the current provisions of Section 42 which require the consideration of lands that include part of an abutting parcel, lands subject to an easement, lands which are encumbered by below grade infrastructure, or privately owned public space (POPS). Although it is not yet in effect, the changes to the Official Plan parks policies should include conditions for the acceptance of these types of land in order for the Town to determine the appropriateness of accepting them since any refusal by the Town to accept those lands can be appealed to the OLT. This will ensure that when those changes come into effect, that the Town has the appropriate policies in its Official Plan. The Town could approve the changes in phases so that those *Planning Act* changes in effect are adopted and those not yet in effect could be adopted at a later date. This allows the consultation process to be completed in a single step.

Parks, Recreation and Culture Master Plan

Section 5.0 of the 2019 Parks, Recreation and Culture Master Plan (PRCMP) sets out a classification system for the Town's parks and open spaces. Table 3 of the PRCMP sets out the target size and the amount of parkland for each classification. Section 5.1.3 notes that parkland is critical to ensure a high quality of life for the Town's residents.

Section 5.1.3 recommends that parkland and open space be secured to:

- Meet growth-related needs and ensure accessibility;
- Enhance access to the waterfront;
- Protect natural habitat and culture significance where the Town has a primary responsibility;
- Establish linear/trail connections vital to creating an active transportation network; and
- Expand existing parks where necessary, to install additional amenities based on needs and where neighbourhoods have lower income levels.

The PRCMP recommended a minimum target of 2.2 ha of parkland (excluding open space)/1,000 residents. The Town's population is anticipated to grow from 26,860 residents in 2021 to 45,660 residents in 2051. In order to address the needs of the residents, the Town will require additional parkland to meet the target of 2.2 ha of parkland/1,000 residents.

Following the approval of the PRCMP, in 2019, the Town acquired additional parklands. Those include the parkland within the Cherry Heights subdivision and the final section of Prokich Park within the Vista Ridge subdivision. The current inventory of municipal parkland (as of Dec. 31, 2022) is shown in Table 2. No additional parklands have been acquired to date in 2023. In addition to the acquisition of additional parkland, the Town has also developed and/or made improvements to several existing parks since the approval of the PRCMP.

Table 2
2022 Parks Inventory

| Park Classification | Area (ha) 2022 | Area (ac) 2022 |
|----------------------------|-----------------------|-----------------------|
| Destination Park | 11.52 | 28.46 |
| Sports Park | 24.16 | 59.70 |
| Community Park | 7.80 | 19.27 |
| Neighbourhood Park | 6.15 | 15.19 |
| Total Parks | 49.63 | 122.62 |

In addition to parklands, the PRCMP included an inventory of the Town's natural areas and open space linkages. Although open space and natural areas are excluded from the target of 2.2 ha of parkland/1,000 residents in the PRCMP, these lands do provide for passive recreational uses as well as linkages which support active transportation.

Following the approval of the PRCMP, additional trails or trail sections were developed within the Cherry Heights subdivision, south of the Vista Ridge subdivision within a Town road allowance and along Konkle Creek. The current inventory of natural areas and open space (as of Dec. 31, 2022) is shown in Table 3. No additional natural areas or open space lands have been acquired to date in 2023.

Table 3

2022 Natural and Open Space Linkages Inventory

| Open Space Classification | Area (ha) 2022 | Area (ac) 2022 |
|--------------------------------------------|----------------|----------------|
| Natural Area | 31.54 | 77.94 |
| Open Space Subtotal | 16.50 | 40.77 |
| Total Natural Area and Open Space Linkages | 48.04 | 118.71 |

Both the Official Plan and the PRCMP support the acquisition of additional parklands to accommodate growth. Within existing draft approved plans and approved zoning applications, it is anticipated that the following additional parklands will be provided in the short-term:

- 5.54 ha of open space along the lakefront and 1.18 ha of parkland within the Prudhommes draft plan; and
- 0.09 ha of parkland on the former Vineland Growers site in Jordan Station.

The Town's Official Plan identifies the acquisition of additional parklands in the future. Those parcels include lands to the northeast of Ashby Park in Beamsville and lands within Campden. There is also the opportunity for additional parklands to be acquired, albeit smaller in size, as a result of the redevelopment of existing parcels of land. Should the BDSS site be redeveloped, there is the opportunity to enlarge existing adjacent parks and/or create a new park on part of the lands. However, in many instances lands that are being redeveloped are too small to acquire parklands. In those instances, the use of cash in lieu of parkland dedication is appropriate so that the funds can be used to improve existing parks and to acquire other lands for parks purposes.

The use of privately owned public space (POPS) is a new trend and staff anticipate that it will become more common in the future as parcels are redeveloped for mixed-use purposes. To date, the Town has approved the following POPS spaces:

- 0.17 ha of private open space (publicly accessible) in the DeSantis mixed-use development on Greenlane in Beamsville; and
- 0.6 ha of private open space (publicly accessible) in the New Horizon development on Greenlane in Beamsville.

As outlined in this report, a parks plan is required before Council approves a parkland dedication by-law. The Town has an approved PRCMP, and it is being reviewed with the assistance of Watson & Associates Economists Ltd. to determine if any updates or an addendum is required to meet the legislative requirements.

Financial, Legal, Staff Considerations:

Financial:

In accordance with Section 42 of the Planning Act, the parkland reserve may only be used for the acquisition of lands for park or other public recreational purposes, including the construction, improvement and repair of buildings and the acquisition of machinery for park or

other recreational purposes. Where the Town needs to purchase land for parks and/or develop parks and/or make improvements to parks, it is important to ensure that the Town has a healthy reserve to fund acquisitions and improvements. There may be a gap in achieving 2.2 ha of parkland/1,000 people by 2051. The Town may need to contribute from other sources (taxes/rates) to pay for additional parkland and improvements if contributions are not enough. The Town has retained Watson & Associates Economists Ltd. to provide financial advice regarding the changes to the Planning Act and the use of the alternative parkland dedication and cash in lieu of parkland requirements.

Staffing:

N/A

Legal:

The draft of the parkland dedication and cash in lieu of parkland dedication by-law will be reviewed by the Town's legal counsel.

Public Engagement Matters:

The use of the alternative parkland dedication and cash in lieu of parkland provisions will require consultation with the public and the development community prior to approval of any by-law or the adoption of new policies to implement the changes to the *Planning Act*. The required amendment to the Official Plan will require consultation with the public and development community as well the holding of a public meeting in accordance with the requirements of the *Planning Act*.

Conclusion:

As outlined in this report, Staff are undertaking a review of the parkland dedication and cash in lieu of parkland dedication policies and by-law to ensure that the Town's policies and by-laws are updated to conform with the new provisions in the *Planning Act* resulting from the approval of Bill 23.

Respectfully submitted,

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Appendices:

Appendix A Draft Amendment to the Official Plan

Notification:

Notice of the draft by-law and policies will be in accordance with the requirements of the Planning Act.

Report Approval:

The report has been reviewed by the Director of Planning and Development, the Director of Finance/Treasurer and the Director of Community Services. The Chief Administrative Officer has approved the report.