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INTERIM CONTROL BYLAW – ESTABLISHED RESIDENTIAL NEIGHBOURHOODS Staff Report

Report Number: 2019-3

Department(s): Development and Infrastructure Services/Planning and Building Services

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Meeting Date: January 14, 2019

Recommendations

1. That the report entitled INTERIM CONTROL BYLAW – ESTABLISHED RESIDENTIAL NEIGHBOURHOODS be received; and,
2. That staff be directed to prepare an Interim Control By-law substantially in accordance with Option One identified in this report and the attached draft Option One By-law

Purpose

The purpose of this report is to provide details on the recommended Interim Control By-law and to recommend Council direct staff to bring forward the Interim Control By-law to the next available Council meeting.

Background

Council adopted the recommendations of Planning Report 2018-37 directing staff to hire a consultant to prepare Official Plan and Zoning By-law Amendments that will identify Newmarket neighbourhoods based on existing characteristics and recommend policies that are reflective of the built form to guide new infill residential dwellings and significant additions, addressing community character and compatibility. Council also directed staff to prepare an Interim Control By-law for established residential areas that would prevent the construction of non-compatible new infill dwellings and significant additions while the issue is studied.

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Discussion

Section 38 of the Planning Act allows municipalities to pass an Interim Control By-law which puts a temporary freeze on some land uses while a municipality is studying or reviewing its policies. The Interim Control by-law can be imposed for only a year, with a maximum extension of another year. There is no ability to appeal an Interim Control By-law when it is first passed (other than the Minister of Municipal Affairs and Housing), however, an extension to a By-law may be appealed. The Planning Act provides that an Interim Control By-law remains in effect past the two-year period if the new zoning by-law which replaces the Interim Control By-law is appealed to the Local Planning Appeals Tribunal.

The Interim Control By-law is a planning tool by which the town may respond quickly to identified planning issues. Prior to enactment, Council must authorize the land use planning study to be undertaken and substantiate the planning rationale behind the Interim Control By-law. This report along with Planning Report 2018-37 is sufficient to achieve the above requirements. The scope of the planning study and the area to be subject to the By-law must be clearly identified in the Council resolution. Once the By-law is enacted, the expectation is that the planning study will be completed expeditiously and will result in formal amendments that implement the future planning policies for the study area.

Once an Interim Control By-law is in place, the area to which the By-law applies may be reduced as information becomes available throughout the study process provided the proper justification exists. An amendment to the Interim Control By-law to reduce the study area would be subject to appeal.

Under the Ontario Planning Act, an interim control bylaw is directly related to the use of the land and not the specific development standards associated with the use. To ensure the proposed ICB is sound and reflects the intent of the Planning Act, the recommended By-law includes a new land use called “Intensified Use” as described further below in this report.

Municipal Examples of Interim Control Bylaws

Other Ontario Municipalities have implemented an ICB in the last few years in an effort to address similar issues in their community.

St. Catharines

The City of St. Catharines’ 2016 Interim Control By-law prohibits all new development in its Low Density Suburban Neighbourhood zone, with the exception of new dwellings and additions that meet the current zoning bylaw standards (including any approved Minor Variances), development of an ADU, new accessory structures in accordance with current zoning (including any approved Minor Variances) and prohibits the creation of a new vacant lot.

The Planning Report indicates: “The purpose of the interim control by-law is to prohibit any new multi-unit development (semi-detached, townhouses, quadruplexs, and private road developments), and any new vacant lot creation in the Low Density Residential-Suburban Neighbourhood (R1) zone, until such time as the staff review, as directed by Council, is complete. It would not preclude development of new detached dwellings on existing lots of record, building additions, interior accessory apartments, or accessory structures providing these are in accordance with the zoning by-law, or the zoning by-law as amended by minor variance approvals by the Committee of Adjustment.”

Aurora

Similar to St. Catharines, the Town of Aurora’s 2018 Interim Control By-law requires any new development to be in accordance with the in force zoning by-law and restricts applications for Minor Variance.

Kingston

The City of Kingston’s 2017 Interim Control By-law prohibits what Kingston defines as an “Intensified Use”. The bylaw prohibits new dwellings where the land or building was not used as such on the date the bylaw was passed, no additions of floor area beyond that which existed as of the date of the bylaw, and no conversions of existing floor area into additional dwellings or bedrooms.

Kingston’s Interim Control By-law is partially in response to post secondary institution student housing demands. The Kingston Planning Report indicates: “Enrollment of first year students at Queen’s University and St. Lawrence College is intended to increase, and with the majority of students living off-campus after their first year, there will continue to be pressures on the private market to provide this supply of housing. Council further identified that the existing zoning by-laws do not currently provide adequate protection of stable neighbourhoods and permit the conversion of one-family dwellings into dwellings that are able to accommodate a large numbers of bedrooms which are therefore unlikely to be used again to house a family, and which makes it difficult to maintain neighbourhood balance and its planned function. Over time, the cumulative effect of change in built residential form in these areas has impacted the neighbourhood desirability for many residents.”

Halton Hills

The Town of Halton Hills enacted an Interim Control By-law in 2016. The By-law applies only to single detached dwellings. The By-law allows a new dwelling to be constructed provided it does not exceed by 25% or more the GFA of any single detached dwelling that existed on the lot on the date the by-law was passed.

The By-law also allows for residential additions up to 25% of the existing GFA of the dwelling as it existed on the day the ICB is passed.

Options and Recommended Approach

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Staff are putting forward two options for council to consider. The first would continue to allow homeowners within the study area to draw building permits for new construction with provisions to limit the size and the second would put a freeze on any new development in the study area. Both options would allow for the recommended exemptions. As noted earlier in this report, under either option, the creation of the new land use category “Intensified Use” along with a definition is required as the Planning Act only allows the regulation of “use” under an interim control bylaw and not development standards.

Depending on the level of restriction Council desires, an intensified use will be defined in the by-law either as:

any increase in floor area beyond 25% of the floor area of a residential dwelling that existed on a lot on the day the ICB is passed and any increase in height beyond the height which existed on the day the ICB is passed.

or

any increase to the floor area of a dwelling beyond that which is existing on a lot on the day the ICB is passed.

While the bylaw would not prevent applications to Committee of Adjustment for consent to sever land, any new lot created would be subject to the terms of the interim control bylaw.

Option One

The first option for Council’s consideration is to pass a bylaw that would allow for the construction a new dwelling or additions to existing dwellings provided the total floor area does not increase the GFA of any dwelling that existed on the lot on the date the by-law was passed by more than 25%.

As the roof pitch significantly impacts the height of a dwelling, to ensure the height of any new replacement dwelling or addition remain sympathetic any new construction or addition that increases the height beyond that of the existing height would be considered an “Intensified Use” and not be permitted.

Staff are recommending this approach as it would continue to allow for some development activity to occur with provisions in place to ensure additions and replacement buildings can only moderately increase floor area from the dwelling existing on a lot when the bylaw is passed. This option would not allow a new dwelling to be constructed on a vacant lot (provided it does not meet one of the noted exclusions).

Option Two

Alternatively, Council may desire to significantly freeze any development in the study area similar to the City of Kingston. The second draft Bylaw attached to this report restricts both new residential buildings and additions in the study area. It would allow for

the demolition and rebuilding of a dwelling provided the new dwelling does not increase the floor area or height beyond what existed at the time the interim control bylaw is passed by Council.

Either option represents good planning and is wholly based on the level of restriction Council deems appropriate.

Study Area and Use Consideration

Regardless of the approach Council takes in terms of permissions, staff recommends the following general parameters for the proposed interim control bylaw.

ICB Will apply	ICB Will not apply
New residential infill replacement buildings in the Stable and Emerging Residential Designations	Where a building permit has been issued for a new dwelling on the day the bylaw is passed
Additions to existing residential buildings in the Stable and Emerging Residential Designations	Where a building permit has been issued for an addition on the day the bylaw is passed
Vacant lots	Complete applications for severance submitted prior to the Bylaw being passed
	Areas currently under an ICB (Main Street North)
	Subdivisions/site plans that are under construction or have a specific Council approval
	Subdivision or site plan applications that are currently in process that require a Council Approval
	Residential accessory structures
	Constructing an accessory dwelling unit that does not increase the floor area or height of an existing dwelling on a lot

Staff propose the Interim Control Bylaw be in effect for the area defined in Schedule A which includes all land in Newmarket that has the Stable and Emerging Residential designations under the Official Plan with the exception of the above noted exclusions.

Once the neighbourhood study has commenced and neighbourhoods begin to be defined, if desirable, Council can amend the boundaries of the Interim Control By-law to remove areas that have been assessed to not require additional policy protection.

Provincial Policy Statement and Places to Grow Legislation

The implementation of an interim control bylaw as described in this report is consistent with current Provincial Policy Statement and Places to Grow legislation. Both these Provincial documents discuss the Planning regime in Ontario and provide planning policy direction to municipalities on matters of Provincial interest related to land use planning and development. These documents provide a framework for building strong prosperous communities by managing growth.

Newmarket Official Plan considerations

Section 16.2.3 of the Town's Official Plan reads that Council may enact Interim Control By-laws in accordance with the Planning Act, in order to limit or prohibit the use of certain lands until a review or study of the land use planning policies affecting those lands has been undertaken.

Compatibility is a recurring theme in the 2006 Official Plan, reinforcing the principle of managing growth and change in a sustainable manner. The study to review the Official Plan and implement associated zoning standards is consistent with the intent of the Official Plan.

Conclusion

Staff are recommending the Interim Control By-law be implemented for the lands identified in appendix 1 and contain the exemptions as described in this report.

Business Plan and Strategic Plan Linkages

The development of new Official Plan policies and implementing zoning by-law related to infill housing and compatibility has linkages to the Community Strategic Plan by developing growth management plans and strategies to create a clear vision for the future of the identified neighbourhoods.

Consultation

Staff anticipates that the process going forward on the broader Planning Study will require a significant amount of public consultation and at least one statutory public meeting. At the time of writing this report, the RFP for the consultants to lead the process has been issued.

Human Resource Considerations

Not applicable

Budget Impact

Council have granted budget approval in the amount of \$150,000 to be transferred from reserves to allow staff to contract a consultant in the fall of 2018 through Development and Infrastructure Services/Planning and Building Services Report 2018-37.

Attachments

Draft Interim Control By-law (option 1)

Draft Interim Control By-law (option 2)

Approval

Commissioner Development and Infrastructure

Director of Planning and Building Services
Services

Senior Planner – Community Planning

Contact

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