
For Information

REPORT TITLE: **Servicing Capacity Allocation Process and Related Sunset Clause**

FROM: Kealy Dedman, Commissioner of Public Works

OBJECTIVE

To provide a response to Council Resolution Number 2023-393 on the motion regarding Servicing Capacity Allocation Process and Related Sunset Clause from the May 11, 2023 Regional Council meeting.

REPORT HIGHLIGHTS

- Based on the integrated approach Peel follows to align infrastructure planning with growth forecasts, the review undertaken by Regional staff did not identify any areas in the Region with significant underutilized servicing capacity. Downtown Mississauga and Bram West have limited excess capacity, which are expected to be consumed in the coming years as these areas continue to develop.
 - The 2024 Capital Budget is being prepared by Regional staff to respond to local growth priorities and pressures. Work on the update of the Water/Wastewater Master Plan is also underway which will set out Peel's long term infrastructure requirements.
 - Based on information provided by local municipal staff, there are a limited number of housing units in site plans, and a moderate number of units in plans of subdivision that have been approved or draft approved for two or more years that have not proceeded to building permits. There are, however, significant numbers of units in approved site-specific zoning by-law amendment applications that have not proceeded to development.
 - While there are provisions in the *Planning Act* related to the lapsing of approval of plans of subdivision and site plan agreements there are currently no provisions that allow for municipalities to revoke approved zoning by-law amendment applications.
 - Local municipalities have sunset clause tools available to them through the *Planning Act* for site plans and plans of subdivision and can use approval conditions and agreements to encourage site plans and plans of subdivision to proceed expeditiously within a specified time frame.
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DISCUSSION

1. Background

Peel's local municipalities have provided Council endorsed housing pledges to the Province to meet the Bill 23 housing targets which are intended to support the broader Provincial goal of 1.5 million new homes by 2031. The provincial housing targets for Peel's local municipalities are very ambitious, being collectively nearly 2.5 times the Regional Official Plan housing forecast to 2031 and approximately 90 percent of the housing growth forecast from 2021 to 2051. The

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Region is undertaking a number of infrastructure planning strategies to support achieving the housing targets which were outlined in a March 9, 2023 report to Regional Council titled “Infrastructure Planning and Requests of the Province to Support Bill 23 Housing Targets” (Resolution 2023-182) and presented in an October 26, 2023 update report titled “Progress on Infrastructure Planning to Support Bill 23 Housing Targets”.

At its May 11, 2023 meeting, Resolution 2023-393 was passed by Regional Council and directed that Regional staff, request the staff of the Town of Caledon, City of Brampton, and City of Mississauga to work in collaboration to:

- *Identify areas that have been zoned or are available to be zoned in accordance with the Peel Official Plan for residential uses that remain undeveloped and/or redeveloped, and for which servicing capacity remains underutilized;*
- *Identify developments in Peel that have received draft approval or site plan approval and have not advanced to registration or obtained building permits in two years or more from when approval was obtained; and,*
- *Identify options and tools available or required to encourage the expeditious development of these zoned lands or applications to support the Bill 23 Housing Targets including exploring the use of sunset clauses including recommended timeframes, policies, or procedures to rescind, suspend and/or hold development of these lands and applications.*

This report provides responses to the information requested by Regional Council through this resolution and proposes directions to encourage the expeditious development of housing in Peel to support the Bill 23 housing targets.

2. Findings

a) Servicing Allocation Process and Underutilized Servicing Capacity in Peel

Servicing Allocation Process Before Bill 23

The provision of Regional water and wastewater infrastructure is delivered in accordance with the Region’s 2020 Master Plan, 10-year capital plan and annual capital budgets based on a growth scenario forecast prepared in 2018, which has a 2041 planning horizon and was endorsed by Regional Council in 2020. An update to the Master Plan is underway to align to the new Regional Official Plan 2051 as well as to identify the infrastructure needs to plan for the growth forecasted by Bill 23.

Infrastructure master plans are based on a long-term growth forecast that allocates population and employment growth to sub-municipal areas referred to as Small Geographic Units (SGUs). Preparation of the forecast is based on a range of considerations including active development applications, land use permissions, where intensification will be focused, vacant land, market factors, employment trends, demographics, immigration, and other inputs.

Through the annual capital budget process, adjustments are made to the timing of infrastructure projects based on the actual pace and location of growth, aligning timing of infrastructure improvements with road improvements, economic conditions, official plan amendments, secondary plans, and other factors. This annual review can result in projects being advanced, deferred and in some instances new projects are added. For example, at

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the outset of the COVID-19 pandemic, a financial risk management strategy was employed to defer a number of water and wastewater and transportation in anticipation of slower growth.

As a result of the iterative process that aligns the construction of infrastructure projects with growth, there are limited instances of large areas where infrastructure capacity is available, and development is not proceeding or planned to proceed. This practice ensures projects are available when development is ready to proceed, or to ensure projects are not built too far in advance to minimize operational challenges and/or maximize use of existing infrastructure.

Servicing Allocation Process Post Bill 23

With the new Region of Peel Official Plan and the Provincial Bill 23 housing unit targets, development pressures are being seen in many areas across the Region, that were not previously identified for growth. As outlined in recent staff reports to Council in March, April, and October 2023, three tactics are being used to actively plan water, wastewater and transportation infrastructure. The three tactics are summarized below:

- **Tactic #1 – Align Growth to Available Infrastructure:** Focus growth in areas with existing and planned infrastructure capacity.
- **Tactic #2 – Update Population and Employment Growth Distribution:** Region and local municipalities collaborate to update the forecasts to 2051 to reflect local municipal priority growth areas and the preparation of a high growth scenario to incorporate the Bill 23 housing targets.
- **Tactic #3 – Complete Master Servicing Plans and Review Advancement Options:** Update the master servicing plans based on the updated forecasts in Tactic #2. Opportunities to provide infrastructure that would accelerate growth will be brought to Regional Council for direction.

There is a companion report on the October 26, 2023 Regional Council Agenda providing an update on the progress to provide water and wastewater infrastructure to support the additional growth planned in the Peel 2051 Official Plan and the Bill 23 housing targets.

Underutilized Servicing Capacity in Peel

To provide a perspective on servicing capacity in the Region, an assessment of the master plans forecast growth was compared with actual census population, build permit data, and development applications to identify areas where actual growth is tracking-behind the forecast. It was found that while a few areas are tracking-behind, many areas are on-track or tracking-ahead.

As mentioned previously, as a result of the integrated approach the Region uses to align infrastructure planning with development trends, the review undertaken concluded that there are no large areas in the Region with significantly underutilized capacity. There is some spare capacity reserved for developments which are underway and through their phasing will eventually claim this capacity. Some examples are the Mississauga Downtown Core and Bram West Secondary Plan area which is a result of planning undertaken by the Cities of Mississauga and Brampton to have lands ready for development in these strategic Growth Areas.

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b) Development Application types and tools to encourage development.

Regional staff have worked with local municipal staff to collect data to support preparation of this report. The types of applications summarized in the next sections are shown on Figure 1.

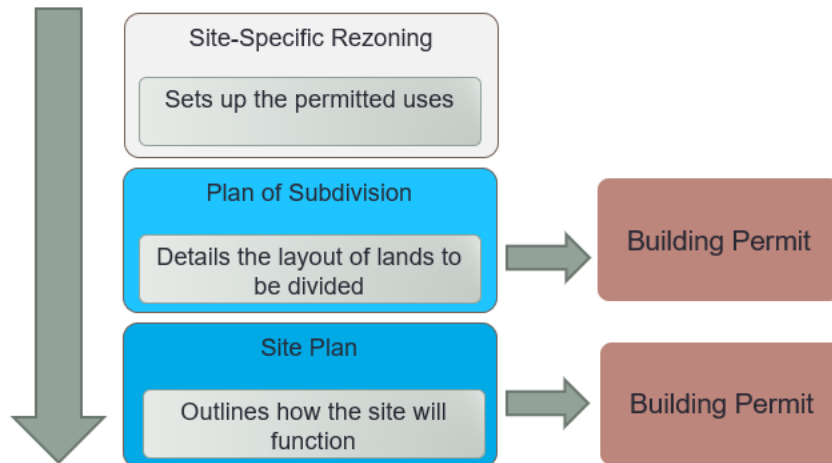


Figure 1: Planning approval to building permit process.

Draft Plans of Subdivision

Examination of local municipal development application information identified a modest number of plans of subdivision, approximately 6,600 housing units across the Region, that have been draft approved or registered for two or more years that have not proceeded to building permits.

Under the *Planning Act*, local municipalities have the authority to set a time frame (not less than three years) when Draft Plan of Subdivision approval can be lapsed. In addition, a local municipality may by by-law designate any plan of subdivision or part of a plan that has been registered for eight years or more, not to be a registered plan. There are examples of local municipalities that reflect this provision in the Planning Act in the implementation section of their official plans, such as the City of Hamilton and the City of Burlington.

Site Plans

There are relatively few site plan applications that have been approved where building permits have not been sought within two years. Under the current legislative framework, local municipalities have the ability to lapse site plan approvals.

The *Planning Act* allows municipalities to enter into a site plan agreement with a proponent as a condition of site plan approval. Site plan agreements can include provisions that the agreement may become void if the proponent does not act on building on their site within a specified time frame. The City of Mississauga includes a sunset clause as part of their site plan approval letters which state that site plan approval is valid for one year. The Town of Caledon and the City of Brampton also have provisions in site plan agreements regarding when the proponent is required to start work.

Site-specific Zoning By-law Amendments

The largest number of units were found in site-specific zoning by-law amendments that have not proceeded to site plan, draft plan of subdivision or building permit. We were able to

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obtain data from the City of Mississauga that advised that over the past 10 years approximately 6,000 housing units were approved that have not proceeded to development.

The City of Mississauga has undertaken additional analysis, beyond the 10-year period, on zoning by-law amendment applications and zoning permissions. The City's analysis indicates that, in total, Mississauga has sites with zoning permissions in place for more than 45,000 units where a site plan application or lifting of a Holding provision has not been applied for. While this seems to suggest capacity is allocated for these units that are not progressing, they are within high growth areas within the City, and there are benefits to having a supply of development ready sites.

Currently, under the *Planning Act*, local municipalities do not have the ability to revoke site specific zoning by-law amendment approvals. The municipality would have to undertake an additional zoning by-law amendment process to return the property to the former zoning. Housing pledges from both the Town of Caledon and the City of Brampton requested that the Province introduce a new tool enabling municipalities to implement sunset clauses for site-specific zoning by-law amendments. In a recent briefing letter from the new provincial Municipal Affairs and Housing Minister, Paul Calandra, advised that the province is considering a provincial "use it, or lose it" policy that is meant to address servicing allocation challenges across the province. Staff will continue to monitor provincial initiatives and provide input on any policy proposals.

Despite the lack of a lapsing provision in the *Planning Act*, there is at least one example of an Ontario local municipality setting up a sunset clause provision related to site specific re-zoning applications. In April 2022, the Town of Aurora Council passed a motion to direct staff to add the appropriate sunset clauses to all future site-specific zoning by-law amendments passed by Council. Under this motion, if a building permit has not been issued within a specific time frame, the by-law will automatically repeal, and the zoning of the property will revert to the original zoning. Town of Aurora staff confirm they have included sunset clauses within site-specific zoning by-laws. Should this be something Council wishes to explore further, the legal implications would need to be considered.

When discussing revoking zoning approvals, it is important to also consider that the process to re-zone a parcel of land typically takes approximately six months to a year, and results in development ready sites that can serve to expedite development across the Region amid a housing crisis.

Building Permits

Local municipalities in the Region of Peel issue building permits for development. Under subsection 8 (10) of the *Building Code Act, 1992* the chief building officer may revoke a building permit under certain conditions including non-commencement of the works within six months of issuance or suspension of works prolonged for a year. This offers a significant tool to local municipalities to explore since the revocation of a building permit may trigger increased development charges payable upon reissuance. The use of sunset clauses in building permits issued by local municipalities may incentivize developers to avoid delays.

c) Servicing Allocation Programs

While not a *Planning Act* tool, an additional potential tool for municipalities to encourage the expeditious development of housing would be through a servicing allocation program wherein the local municipality has a "use it or lose it" policy for approved development that do not proceed within a specified time frame.

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Although Peel does not have a formal servicing allocation program, our practice of planning for water and wastewater services starts with the forecasts of population and employment growth through our Official Plan update in consultation with our local municipalities and stakeholders including the development industry. Water and Wastewater Master Plans are then updated to reflect these growth forecasts and reviewed regularly for updates to reflect development trends.

The Town of Caledon has a policy in their draft official plan which states that the Town, in consultation with the Region, may impose conditions on water and sewer servicing, including placing time limits on approvals that reserve servicing capacity.

Halton Region and York Region have well-established servicing allocation programs which are discussed below.

Halton Region

Halton has had a servicing allocation program for more than 20 years which is set up to both allocate servicing and fund growth-related Regional water and wastewater infrastructure for greenfield development. Residential greenfield landowners are required to participate in an allocation program and by doing so, they secure servicing capacity. The allocation program requires developers to pre-pay development charges and/or provide front-end payments to finance Regional growth-related infrastructure. Over past number of years, there have been different allocation programs with different financing terms. Given the terms that landowners participate in Halton's Program through agreements that require early DC or front-end payments, this acts as an incentive for landowners to develop in an expeditious manner.

York Region

Since 2005, York Region has had a water and wastewater capacity assignment protocol to support growth in the Region. Every few years, the Region assigns servicing capacity to local municipalities and then they in turn allocate to residential development applications. The Regional capacity assignment to each local municipality is based on several factors including a short-term growth forecast, a current assessment of unused servicing capacity and determining the capital projects currently planned for the capacity assignment period.

Each local municipality has a Council approved framework for assigning allocated capacity from the Region which sets priorities and other requirements. For example, the Town of Newmarket has a policy that establishes applications within the Town's Urban Centres Secondary Plan area (their primary intensification area) as the priority. Local municipalities are also encouraged to have a sunset clause provision such as the Town of Newmarket which has policy wherein if development has not taken place within one year that servicing capacity was allocated, the allocation is deemed to be rescinded and the Town may re-allocate the capacity to other development(s).

3. Proposed Direction

Peel municipalities can continue to work together to track applications that are not advancing. The local municipalities have approval authority for site plans and site-specific zoning amendments and have been delegated approval authority by the Region for draft plans of subdivision and local official plans. As previously noted, the local municipalities have these authorities and aforementioned tools available to them to require site plans and draft plans of subdivision to proceed expeditiously within a specified time frame. When

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providing comments on proposed legislative changes, Regional staff can continue to advocate to the Province for additional legislative tools to allow municipalities the discretion to lapse site-specific zoning by-law amendment applications within a certain timeframe.

BILL 112 RISKS AND IMPLICATIONS

At this time, it is uncertain how Regional water and wastewater services will be delivered after the dissolution of Peel Region. Any work undertaken on looking into setting up changes to servicing allocation will need to consider the work of the Transition Board and especially the recommendations on how water/wastewater services are to be structured going forward. This will have a direct impact on the framework, structure, and operations of a potential servicing allocation program.



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