

Region of Waterloo
Planning, Development, and Legislative Services
Community Planning

To: Regional Council
Meeting Date: June 19, 2024
Report Title: Supporting the City of Kitchener's Innovative Planning Policy Framework to Address the Housing Crisis through the Approval of Official Plan Amendments

1. Recommendation

THAT the Regional Municipality of Waterloo approve Amendment No. 48 to the Official Plan of the City of Kitchener; and

THAT the Regional Municipality of Waterloo approve Amendment No. 50 to the Official Plan of the City of Kitchener; and

THAT the Regional Municipality of Waterloo approve Amendment No. 133 to the Official Plan of the City of Kitchener; and

THAT the Regional Municipality of Waterloo modify and approve Amendment No. 49 to the Official Plan of the City of Kitchener; as set out in Appendix 'A' of Report PDL-CPL-24-013, as dated June 19, 2024, by the Regional Municipality of Waterloo all in accordance with Sections 17 and 21 of the Planning Act, R.S.O. 1990, Chapter P. 13, as amended.

2. Purpose / Issue:

The purpose of this report is to recommend that Regional Council, as the approval authority for Official Plan Amendments under the Planning Act, approve Amendment Nos. 48, 50 and 133 to the Official Plan of the City of Kitchener and modify and approve Amendment No. 49 to the Official Plan of the City of Kitchener; as set out in Appendix 'A'.

3. Strategic Plan:

This report supports the Homes for All pillar of the 2023-2027 Corporate Strategic Plan.

Report Highlights:

- The City of Kitchener has recently completed an award-winning planning policy exercise to address the housing crisis through the adoption of the Growing Together policy framework and the phased introduction of inclusionary zoning within Protected Major Transit Station Areas (PMTSAs).
- These innovative policies provide for a full range of housing types and densities

to be achieved including the ability for the City to require developers to provide a certain percentage of affordable housing units as part of multi-unit development within Protected Major Transit Station Areas.

- These policies generally implement the goals and objectives within Regional Official Plan Amendment No. 6 including providing for a full range of housing types and implementing inclusionary zoning as a means of requiring affordable housing in Protected Major Transit Station Areas.
- Three Official Plan Amendments (OPA Nos. 49, 50 and 133) are part of the Growing Together policy framework and are in part dependent upon each other for implementation. In addition, Official Plan Amendment No. 48 puts in place the necessary policy to implement inclusionary zoning. While OPA No. 48 is not technically dependent upon the Growing Together amendments all of the amendments were considered by Council and presented to the development community as a 'package'.
- Regional staff are generally supportive of the City of Kitchener's Growing Together policy framework including the shared vision of creating housing affordability and intensification in the City's PMTSAs. OPA Nos. 48, 50 and 133 are being recommended for approval as adopted by the City of Kitchener on March 18, 2024 and are attached as Appendices B, C and D.
- Official Plan Amendment No. 49 (See Appendix 'E') applies to lands that include 7 of the City's 10 PMTSAs and the City's Urban Growth Centre. It creates an Official Plan designation (Strategic Growth Area C) with no maximum building height and results in a zone that is promoted as having no height limits. This has the potential to result in incompatible land uses and development and potential aviation safety hazards impacting the long-term operation and economic role of the Region of Waterloo International Airport (YKF). Further, in the locations within OPA No. 49 where federal Airport Zoning Regulations (AZR) exist, these policies conflict with the AZR (See Appendix 'F').
- OPA No. 49 is being recommended for approval with three modifications as detailed in Appendix 'A' to ensure land use compatibility, discourage a potential aviation and public safety hazard and protect for the long-term operations and economic role of YKF.
- The AZR, which were last amended in 2009, do not address the current land use compatibility issues generated by current flights paths and the proposed building heights in the vicinity of YKF (See Appendix G).
- The modifications provide developers with a high level of certainty and transparency with respect to permitted heights and are an interim measure until additional federal protections are in place. Significant height and density can continue to be achieved within this geography including heights that could range from approximately 30-50 stories.

4. Background:

The City of Kitchener recently completed an award-winning planning policy exercise that resulted in the adoption of four Official Plan Amendments. OPA Nos. 49, 50 and 133 are part of the City's Growing Together initiative and OPA No. 48 is the policy framework necessary to implement inclusionary zoning within PMTSAs.

Together, these OPAs create the framework to provide for a full range of housing types and densities and include the ability for the City to require affordable housing units be constructed by developers as part of multi-unit residential projects. The Region encourages and supports policies that increase the supply and affordability of housing and the adopted OPAs generally implement the direction provided in Regional Official Plan Amendment No. 6 (ROPA 6).

A description of the adopted amendments are included in Appendix 'H'.

The Region received required materials under the Planning Act for OPA Nos. 48, 50 and 133 on April 2, 2024 and on May 7, 2024 for OPA No. 49. In accordance with the Planning Act the Region is required to make a decision by July 31, 2024 for OPA Nos. 48, 50 and 133 and September 4, 2024 for OPA No. 49.

The approval of Official Plan Amendments is typically a Commissioner Delegated Approval (By-law 17-035) except where:

- a. modifications are to be imposed which substantially vary from the recommendations of the Area Municipality, or
- b. approval could have the effect of creating unanticipated financial obligations on the part of the Region.

OPA Nos. 48, 50 and 133 would otherwise fall under the Commissioner's Delegation By-law, however, as they are either dependent on or related to OPA No. 49 they are all being brought together to Regional Council for consideration. OPA No. 49 is required to be considered by Regional Council as it falls outside of the Commissioner's delegation authority for approval for both of the reasons a) and b) noted above.

As the approval authority for Official Plan Amendments, the Region must ensure the Official Plan Amendment is consistent with the Provincial Policy Statement (PPS), conforms or does not conflict with the Growth Plan for the Greater Golden Horseshoe, conforms to the Regional Plan and maintains the policy intent of the City of Kitchener's Official Plan.

With the exception of Policies 6.C.3.17 f) and 15.D.2.75 contained within OPA No. 49 the amendments would otherwise be consistent with the PPS, conforms to or does not conflict with the Growth Plan for the Greater Golden Horseshoe and conforms to the Regional Official Plan.

Policies 6.C.3.17 and 15.D.2.75 italicized and bolded below establish a planning framework that could result in incompatible land uses and development and potential

aviation safety hazards impacting the long-term operation and economic role of the Region of Waterloo International Airport (YKF).

Modifications to OPA No. 49 are recommended as detailed in Appendix 'A' for OPA No. 49 to be consistent with the Provincial Policy Statement and conform to the Regional Official Plan. See Appendix 'I' for detailed policy analysis.

Policy 6.C.3.17 f) introduces the use of a holding provision in the zoning by-law:

6.C.3.17 The City, in planning for land uses in the vicinity of the Region of Waterloo International Airport, will:

f) use holding provisions in the Zoning By-law to require a land use assessment or aeronautical assessment to determine building and structure heights, including temporary structures, for lands identified within the identified within the Land Use Assessment CYKF – KITCHENER/WATERLOO, ON RNAV (RNP) Y RWY 08-RNP0.3” prepared by IDS North America dated October 3, 2023 until such time as the Region of Waterloo completes their Region of Waterloo International Airport Master Plan update in progress in 2024 and any necessary updates to the Federal Airport Zoning Regulations have been completed.

Region staff identified serious concerns throughout the process with the use of a holding provision. The holding provision prohibits buildings and structures of a height over approximately 37 storeys until a detailed NAV Canada land use assessment or aeronautical assessment satisfactory to NAV Canada has been prepared. However, a holding provision is not an effective tool to regulate height. Further, NAV has limited authority and there may be instances where NAV Canada may have no objection subject to conditions that would impact YKF.

A general principle regarding the appropriateness of a holding provision is that the by-law should represent appropriate zoning controls for the lands when the 'H' is removed. Because the Zoning By-law contains no specific maximum height limits, the removal of the holding provision for a specific development results in zoning with unlimited height; this means a proposed building or structure height, which the City contemplates will be secured through a future site plan agreement.

The holding provision approach results in unnecessary risk that could result in incompatible land uses and development and potential aviation safety hazards impacting the long-term operation and economic role of the Region of Waterloo International Airport (YKF).

A modification to 6.C.3.17 f) is recommended that would result in the deletion of this policy and replacement with a policy that would require maximum heights be established in the implementing zoning by-law. A new policy g) is included to recognize that additional height may be considered through a zoning by-law amendment application where it is demonstrated to the satisfaction of the Region of Waterloo that there will be no negative impact.

And 15.D.2.75 which identifies the lands within Strategic Growth Area C as having no maximum height in the Official Plan.

15.D.2.75 Lands designated Strategic Growth Area C may have no maximum building height. The implementing zoning may limit building heights.

A modification to delete policy 15.D.2.75 in its entirety is recommended. The PMTSAs overlap with approaches and departures from the primary runway, and so could never permit “unlimited height” without introducing a land use compatibility conflict and causing a potential aviation and public safety hazard impacting the long-term operations and economic role of the Region of Waterloo International Airport (YKF) (See Appendix G).

Approving OPA 49 with the proposed modifications will result in an official plan amendment that is consistent with the PPS, conforms or does not conflict with the Growth Plan for the Greater Golden Horseshoe, conforms to the Regional Official Plan and maintains the policy intent of the City of Kitchener’s Official Plan.

5. Communication and Engagement with Area Municipalities and the Public

Area Municipalities:

Extensive discussions relating to the potential for incompatible land uses building height and airport operations have been held with staff from the City of Kitchener over the past year and a half as that is the Area Municipality experiencing proposals for development with incompatible height. Region staff provided written submissions to the City expressing concern with the holding provision approach leading up to the City’s adoption of OPA No.49.

Public:

The public were notified through the City’s process on the Official Plan Amendments in accordance with the Planning Act. Region staff have reviewed the public submissions as part of the review of the Official Plan Amendment and the Region received two additional requests.

One request related to the Growing Together Zoning By-law Amendments. The Region is not the approval authority for Zoning By-law Amendments and cannot address this request through the approval of the related Official Plan Amendments. This request has been forwarded to City of Kitchener staff.

The second request relates to 96-90 Courtland Avenue East, Kitchener and requests that the subject lands be redesignated from SGA-A to SGA-B through the Region’s approval of OPA No. 49. The effect of this change would be to increase the height and density for the subject lands. Regional staff have consulted with City of Kitchener staff on this requested change. City staff have advised that the Growing Together project

was calibrated to ensure that there were opportunities for housing across the housing continuum and that it is important to ensure that some lands within the PTMSAs are maintained for mid-rise development. In addition, City staff have advised that this change would not meet the transition or built form regulations prescribed through the Growing Together Zoning framework. It is not recommended that this change be reflected in OPA No. 49.

Notification of the Region's decision will be provided to those who formally requested a Notice of Decision from the Region in addition to those required under the Planning Act.

6. Financial Implications:

Should the modifications not be approved by Regional Council incompatible land uses and development could result in potential aviation safety hazards. Staff understand that Nav Canada could take actions to mitigate, up to and including cancelling the primary approach into the airport. This could result in the potential limitation on or shut down of operations impacting the economic well being of the airport and Waterloo Region.

In the event that any of the decisions are litigated there could be related costs associated with any legal proceedings.

Conclusion / Next Steps:

The policy exercise undertaken by the City has resulted in key planning instruments that will facilitate the development of housing supply and affordability. The amendments generally implement the goals and objectives within Regional Official Plan Amendment No. 6 and will facilitate a full range of housing types and implementing inclusionary zoning as a means of requiring affordable housing in Protected Major Transit Station Areas.

The policies in OPA No. 49 referencing no maximum building height within Strategic Growth Area C and enabling the use of a holding provision to regulate height create a planning framework that could result in incompatible land uses and development. This results in potential aviation safety hazards and compromises the protection of the long term operations and economic role of the Region of Waterloo International Airport (YKF).

Region staff are recommending approval of OPA Nos. 48, 50 and 133 as adopted by the City of Kitchener and OPA No. 49 with modifications as detailed in Appendix 'A' to ensure that Regional Council's decision is consistent with the Provincial Policy Statement, conforms with the Regional Official Plan and meets the policy intent of the City Official Plan. The modifications continue to permit significant height and density within the Major Transit Station Areas and ensures land use compatibility between YKF and future development in a manner that ensures the safety of both uses.

Following Regional Council's decision on the OPAs a Notice of Decision will be issued in accordance with the Planning Act.

Transport Canada has been requested to update the AZR to include the current

Instrument Flight Procedures (IFPs) for the Airport. However, even if Transport Canada decides to move forward by amending the AZR Regulations, it is expected to take between 36 months and 60 months.

7. Attachments:

Appendix A : Decision – Modify and Approve Amendment No. 49 to the Official Plan of the City of Kitchener

Appendix B: Amendment No. 48 to the Official Plan of the City of Kitchener

Appendix C: Amendment No. 50 to the Official Plan of the City of Kitchener

Appendix D: Amendment No. 133 to the Official Plan of the City of Kitchener

Appendix E: Amendment No. 49 to the Official Plan of the City of Kitchener

Appendix F: Map showing Strategic Growth Area 4 Zoning

Appendix G: YKF Flightpath Impact

Appendix H: Description of the Adopted Amendments

Appendix I: Policy Analysis - Modifications to OPA No. 49

Appendix J: 2024 IDS Aeronautical Assessment for Kitchener MTSAs

Appendix K: Presentation

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