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TO: Planning and Housing Committee and Agriculture and Rural Affairs Committee

DESTINATAIRE : Comité de la planification et du logement

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DATE: June 23, 2023

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SUBJECT: Status Update on the New Zoning By-law

OBJET : Compte rendu sur la situation du nouveau *Règlement de zonage*

PURPOSE

The purpose of this Interim Progress Report is to provide Members of Council with a comprehensive update on the new Zoning By-law project. The report will cover the following topics:

- Bill 23 Implications
- Protected Major Transit Station Areas
- Form and Function Discussion Paper
- Staffing Implications
- Project Funding Implications
- Public Engagement Next Steps

## BACKGROUND

Council approved revised timelines for the new Zoning By-law project on March 8, 2023. Staff requested a six-month extension to the project timelines to accommodate the delayed Provincial approval of the new Official Plan and to respond to sweeping Provincial legislative changes. The first Draft of the new Zoning By-law is currently on-schedule and will be tabled at Committee in Q1 2024.

## BILL 23 IMPLICATIONS

### *Background*

Bill 23, known as the *More Homes Built Faster Act, 2022*, aims to increase housing supply and provide flexibility in developing existing housing stock. The legislation grants as-of-right permission for two additional dwelling units (ADUs) in addition to the principal unit on a residential parcel of land with public services. These new rules represent a significant shift in the minimum permitted dwelling number for residential uses across all residential zones. For example, a single detached dwelling is now permitted to have three dwellings in total; a semi-detached is permitted six dwellings; and a three-unit townhouse block could now permit nine units, where severed. Further, Bill 23 removed site plan control from applying to any residential building with 10 units or less. These changes affect all residential serviced lots across the City, including in the village areas, and have the effect of significantly changing the existing as-of-right development potential associated with the existing Zoning By-law.

Document 1 provides maps that compare development potential prior to the passage of Bill 23 and after the passage of Bill 23.

The increase in as-of-right housing opportunity and choice provided by Bill 23 is consistent with the future directions outlined in the Municipal Housing Pledge, the new Official Plan, the New Comprehensive Zoning By-law scope of work as approved in the last term of council, and the overall need to provide for a substantial acceleration in

housing density and diversity of choice across neighbourhoods. However, staff recommend form and function standards appropriate to these new densities that will facilitate good design outcomes. Parking, landscaping, waste storage and basic regulatory controls focused on managing functional pressures in a multi-unit context (such as where multiple ADUs are contemplated) are not currently in the Zoning By-law for detached, semi and townhouse typologies, and are currently only oriented towards low-rise apartment typologies. The intent of the New Zoning By-law is to move away from typology specific rules so as to provide a consistent and level playing field for quality control and balancing of competing interests on a lot as densities are increased through future rezoning.

In response to Bill 23, staff proposed interim amendments to the current Zoning By-law in April 2023 as a first step to harmonize these performance regulations. These proposed amendments sought to address the misalignment between the current By-law and the new permissions for additional dwelling units introduced by Bill 23.

### *Bill 23 - Zoning By-law Implications*

Currently, s.133(5) of the Zoning By-law restricts a Secondary Dwelling Unit (SDU) to a maximum size of 40% of the principal unit. As SDUs have been limited to single-detached, semi-detached and townhouse typologies, Building Code and Zoning staff have consistently interpreted this to mean 40% of the above-grade floor area of the building (or part thereof, for a semi or town). A basement unit has always been permitted to occupy the entirety of the floor area sub-grade.

With Bill 23 now allowing up to two ADUs, the application of s.133(5) is no longer straightforward. For a two-storey building, the first ADU can occupy the basement, the second ADU can occupy most of the first floor, and the third unit (the principal unit) can occupy the remainder of the first floor and second floor – and not contravene s.133(5). A three-storey building with an ADU in the basement could similarly arrange floor plans to be in keeping with the 40% requirement. Where all three units are located above grade then the ADU's are cumulatively limited to 40% of the full area of the above grade floors. This is because in a principal dwelling the spaces set aside for ADUs are, by definition, considered accessory to the principal dwelling unit.

This means that for many of the potential business model and use cases that may flow from these new Bill 23 rules, there will likely be relatively few differences in function and intensity of use between a detached dwelling with a principal unit with two ADUs inside, and a purpose-built triplex. Likewise, the difference has been narrowed substantively between a semi-detached with 2 principal units and four ADUs, and a purpose-built six-plex. Finally, a townhouse with three principal, legally severed units now has similarity

to a low-rise apartment nine-plex in function and intensity, with three principal units and six ADUs.

Document 2 provides a discussion on the manner in which Bill 23 results in different intensities of use, and case studies on select subzones.

These differently defined but effectively similar uses are causing operational and financial challenges to the City, and uncertainty for industry. While it is understood that the intent of Bill 23 is to enable the development of more ADUs within detached, semi and townhouse typologies, the reality is there is a desire among the industry to move quickly towards leveraging these new rights to develop multi-unit typologies with fewer restrictions on unit size per the 40% limit, and other restrictions such as placement of entrances for the ADUs. This is resulting in additional load on BCS and Interpretation staff to work through and negotiate these new permissions, and may lead to an increase in variance requests to the Committee of Adjustment.

Financially, regular purpose-built “principal unit” triplexes and low-rise apartment typologies are subject to Development Charges (DC) and Cash-in-Lieu-of-Parkland Dedication (CILP). However, units created as “additional units” created within an existing dwelling or as part of a new-build pursuant to Bill 23 are not subject to these growth-related charges. As a result, the DC and CILP exemptions provide a clear incentive towards the development of detached, semi-detached and townhouses with ADUs within.

This “incentive shift” is clearly understood as the intent of Bill 23. However, under existing Ottawa zoning regulations, these “Bill-23 enabled” uses have different performance standards from a multi-unit building, which may result in developers taking a minimal approach towards providing design and functional elements appropriate to the increased households on site, and potentially favouring “Bill-23 enabled” multi-unit designs instead of purpose built multi-unit low-rise apartments with their higher standards for building articulation, functional requirements, parking management and landscaping. How this may impact the provision of purpose-built “missing middle” low-rise and mid-density typologies is unknown, as are the financial implications associated with this potential shift. It may be necessary to consider changes to the financial and regulatory underpinnings of other low-rise typologies to balance these incentives and ensure Ottawa can achieve the diversity of unit types required to achieve housing and growth management objectives. Additional study is planned in conjunction with financial analysis of Bill 23 cost implications.

## *Bill 23 – Next Steps*

While these changes incentivize the development of ADUs within single-detached, semi-detached, and townhouse units and contribute to increased housing supply, the existing zoning regulations do not adequately address the form and function standards required for these increased densities. Issues such as parking, landscaping, waste storage, and basic form controls are currently not included in the By-law for these typologies.

The April 2023 package of zoning provisions proposed amendments to:

- replace the secondary dwelling unit and coach houses provisions with a consolidated additional dwelling units section that would eliminate the 40% size cap and allow ADU entrances onto front facades;
- harmonize development standards between detached, duplex and triplex typologies to provide the same development standards (lot width, area, setbacks, height etc) for these typologies; and
- implement landscaping requirements for rear yards to set a limit on the extent of rear yard paving, while leaving some room for soft landscaping and, in conjunction with the infill forestry team, opportunity for tree plantings.

Consultations were held with the Greater Ottawa Home Builder's Association and the Federation of Citizen's Associations as well as feedback from Community Associations. Community Associations, in particular, have expressed concerns about impacts on rear yards from increased parking pressure and have noted the challenges on rear yards currently associated with triplex and long-semi-detached typologies – particularly with regard to tree planting and retention. FCA and industry feedback has been that a more comprehensive look is required, particularly with how the Zoning By-law will address context-based forms per the Official Plan transect and evolving overlay directions.

Additional work is required to address these challenges and get a better picture of the various financial and regulatory pressures – and how to best address these in keeping with the intent of the Official Plan. Staff are therefore moving the Bill 23-related amendments to Q4 2023. Zoning staff will continue to work with Building Code Services and Development Review staff in the interim to respond to issues of interpretation and monitor how industry is realizing Bill 23 "gentle intensification" in their submissions to the City. In particular, staff will be monitoring how the following issues are handled in Bill-23 enabled buildings:

- Choice of building typology proposed, particularly, in R3, R4 and R5 zones where three-unit dwellings and other multi-unit dwellings are already permitted;

- Monitor interpretation of Section 133, in particular around the application of the maximum 40% floor area limit, which was created with the perspective of only one "additional unit" permission;
- Treatment of rear yards and provision of trees and landscaping, particularly with respect to the absence of current restrictions around parking in rear yards;
- Form and function layouts of proposed multi-unit buildings particularly with regard to basic form, design and functional site requirements for waste, cycling and other matters;
- Frequency of interpretations from Planning or Legal staff with respect to how to proceed in unique cases involving two additional units and the 40% rule, which may take up additional staff time and resources; and
- Impacts on development charges and CILP collected.

Interim changes in Q4 will focus on those necessary to ensure proper operational and functional management of ADUs to fully achieve the intent. Should further and more comprehensive amendments be required ahead of the new Zoning By-law, staff will bring this back to the attention of Council.

## PROTECTED MAJOR TRANSIT STATION AREAS

Bill 23 introduced a new requirement for municipalities to approve zoning provisions to implement minimum density requirements in Protected Major Transit Station Areas (PMTSAs) within one year of PMTSA policies coming into effect in an Official Plan. If the one-year timeline is met, the zoning amendments are protected from appeal to the Ontario Land Tribunal.

The Official Plan was approved by the Minister of Municipal Affairs and Housing on November 4, 2022. As part of that approval, 25 new PMTSAs came into effect. Implementing zoning provisions to achieve the minimum densities set out in the Official Plan for these areas has been identified as a priority in the Municipal Housing Pledge and the recent submission to the CMHC Housing Accelerator Fund.

Staff are analyzing the potential of the existing zoning provisions in these areas to deliver the PMTSA density requirements in the Official Plan and have engaged a consultant team to complete this work within the one-year deadline under the *Planning Act*. Portions of the consultant costs will be submitted for reimbursement to the Province through the Streamlined Development Approval Fund, and is eligible for funding under the CMHC Housing Accelerator Fund, should Council wish to distribute received funding for this initiative.

## NEIGHBOURHOOD FORM AND FUNCTION DISCUSSION PAPER

On March 6, 2023, the City released a series of [discussion papers](#) concerning various topics relating to the new Zoning By-law, including the *Neighbourhood Zoning* discussion paper and the *Neighbourhood Character* discussion paper:

- The [Neighbourhood Zoning](#) discussion paper provides high-level information on the approach to the residential (Neighbourhood) zones in the new Zoning By-law, with their focus on form, function, and density regulation.
- The Neighbourhood [Character](#) Discussion paper examines the aspects of “character” that can be regulated using zoning, what character means from a land use and zoning perspective (and what it does NOT mean) and the need to balance this with other land use and growth priorities.

A Neighbourhood Form and Function discussion paper is planned to be released mid-summer 2023. The paper builds on the earlier two discussion papers and will examine in greater detail key zoning issues relating to the built form and function of low-rise infill, including how the Neighbourhood zones in the new Zoning By-law will implement context-sensitive building setbacks and zoning provisions. These provisions build on the policy requirements in the Official Plan to significantly increase the quantity of housing permissions through density and diversity of housing options, but also to improve the quality of new infill in neighbourhoods and have regard for existing and planned context.

The provisions will recognize the continuum of built form from urban to suburban in neighbourhoods throughout the city and the need to use different approaches in the interiors of Neighbourhoods and areas affected by the Evolving Overlay as directed by policies in the Official Plan to respond to existing and future contexts. The paper will also examine functional aspects of development that are regulated using zoning provisions, such as waste management, soft landscaping and location of parking and how these may be impacted by changes in the intensity of use of a lot. The paper will provide the public with a look into how we are intending to approach the implementation of Official Plan policies, and balance the need to greatly expand housing opportunities across neighbourhoods while also managing change respectfully.

In anticipation of the release of the first Draft of the new Zoning By-law in Q1 2024, this Discussion Paper and corresponding consultations will offer an opportunity for ongoing engagement with the public and for gathering views on approaches to regulating development in the Neighbourhood designation, in accordance with the policies in the Official Plan. The consultations will begin in late July and continue through the remainder of 2023. The feedback received will be considered as part of developing the first draft of the new Zoning By-law. An As-We-Hear-It report summarizing the

comments received will also be published in early Q1 2024, prior to the release of the first Draft of the new By-law.

The Neighbourhood Form and Function Discussion Paper is an important step towards developing the Neighbourhood zone provisions. The Official Plan requires zoning to manage built form in context-sensitive ways, in accordance with the intent of the Transect in which they are located, and in relation to whether a lot is subject to the Evolving Overlay. A lot located in the Neighbourhood designation and outside of the Overlay will have zoning regulations that enable development that is appropriate for (but not the same as) its local context, as it is now. This means zoning will allow greater density and housing variety in keeping with density and growth targets for the Transect overall, but the form regulations will take their cues from the existing conditions present today with the intent of providing gradual change.

Properties in the Neighbourhood designation that are subject to the Evolving Overlay will have zoning regulations appropriate to their future planned context as directed by the Transect policies – while also providing the basis for accelerating the density and diversity of sizes and tenure options consistent with the Official Plan and Growth Management Strategy. This will mean new housing forms and regulations that are different from the existing context, and aimed to allow for the future planned context to be realized as infill occurs. This is in keeping with the Official Plan direction to increase the QUANTITY of housing provided, but also provide the form and function controls to provide for the QUALITY of design outcomes as development occurs within established neighbourhoods.

The Neighbourhood Form and Function Discussion Paper has been developed in parallel with the *Urban Design Guidelines for Low-rise Housing*. The Guidelines, specifically tailored for low-rise housing in residential neighborhoods, align with the policy objectives in the Official Plan regarding promotion of high-quality infill design. The provisions in the new Zoning By-law will provide the minimum baseline requirements for the form and function of new buildings to support the development of attractive, sustainable neighborhoods.

## STAFFING IMPLICATIONS

Staff resourcing has been a challenge since the initiation of work on the new Zoning By-law. Consistent with the experiences of other departments and the job market overall, talent acquisition has been a challenge with the team at half of its expected staff complement for the duration of the project to-date. The additional work resulting from Bill 23, contributing towards other initiatives such as the Housing Accelerator Fund, review and commentary on legislation and regulations including the proposed changes

to the Provincial Policy (now Planning) Statement, advancing of works on PMTSAs, hubs and corridors and ongoing work associated with the current Zoning By-law (including topics such as renewable energy generation) has put pressure on existing staff capacity. Despite these challenges, considerable work has been undertaken to address the legislative impacts on the City and to undertake zoning by-law amendments to maintain the current By-law.

The pressing challenges posed by the need to respond to shifting provincial legislation and a shortage of staff resources has required that steps be taken to ensure the project remains on-schedule. Consultants have been retained to assist with work on the first draft of the By-law including work packages focused on provisions relating to: Hubs, Corridors, PMTSAs, Urban Industrial, Rural Industrial, Mineral Aggregate Overlay and Neighbourhood Zones. Given the pressures of Bill 23 and the priorities identified in the Housing Accelerator Fund and Municipal Housing Pledge, Staff are seeking to accelerate the development of the Neighbourhood zone provisions with the assistance of the consulting team.

## PROJECT FUNDING IMPLICATIONS

Amendments to the *Development Charges Act* have removed the ability for municipalities to fund studies using development charges. This has impacted the funding source for the new Zoning By-law as 90% of the funding for the project is from development charges. The funding for the new Zoning By-law as currently provided in the Development Charges By-law will end in 2024. Staff are currently working with the Finance Department to address this funding challenge and will report back to Council on potential options.

## PUBLIC ENGAGEMENT AND CONSULTATION

Since March 2023, seven discussion papers have been presented to the public, accompanied by corresponding surveys. These papers delve into the crucial aspects involved in implementing the new Official Plan, introducing key considerations and proposals. The opportunity for public feedback through the surveys will be available until the end of July, with a new round of public input available with the release of the new Form and Function Discussion Paper mid-summer. To provide an update on the public's input, an interim "As We're Hearing It" report will be published in early September, summarizing the initial responses received for the seven discussion papers and feedback on the Form and Function paper.

Engagement with the public will continue with a series of four open houses. Three of these open houses will be in person, providing an opportunity for direct interaction and dialogue. The fourth open house will be held virtually, allowing for broader accessibility and ensuring that those unable to attend in person can still participate. These open houses will serve as interactive platforms, providing information about the new Official Plan and inviting attendees to share their input on priorities for its implementation in the new By-law.

Additionally, a number of pop-up events will be organized throughout the city. These events will be strategically located at various community gatherings and high-foot traffic areas. They will serve as informal platforms for engaging with a diverse range of individuals and collecting feedback. Informational materials will be available at these events, enabling attendees to learn more about the new Zoning By-law and provide their perspectives on its development.

Following the conclusion of the public consultation process, a final "As We Heard It" report will be published in Q1 2024. This report will encapsulate the feedback received from the open houses, pop-up events, and any other engagement activities undertaken. It will provide an overview of the public's input, including their priorities, concerns, and suggestions. This report will inform the first Draft of the Zoning By-law. Overall, the Fall consultation aims to educate, inform, and actively involve members of the public in the development of the new Zoning By-law. Further consultation will commence with the tabling of the first draft of the Zoning By-law in Q1 2024.

## CONCLUSION

Despite the various issues discussed in this report, staff continue to progress with the development of the first draft of the new Zoning By-law, scheduled for release in Q1 2024. An interim Bill 23 report will be tabled in Q4 2023 to better align the current By-law with the intent of Bill 23. Staff are exploring ways to accelerate development of the Neighbourhood Zones with the assistance of a consulting team and will report back to Council on timing of the Neighbourhood zones in Q4.

In the lead-up to the release of the first draft of the new Zoning By-law, the public will have the opportunity to participate in additional engagement opportunities. The Neighbourhood Form and Function Discussion Paper will be released mid-summer and in-person engagement opportunities will be offered in late Q3 2023.

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#### SUPPORTING DOCUMENTATION

1. Bill 23 Impact Map
2. Post- and Pre-Bill 23 Typology Impacts