

Motion from Mayor Lucas Cleveland regarding the use of Interim Control By-law

Action Recommended

WHEREAS the Town of Cobourg Official Plan 2010 (Five Year Review Consolidation) remains the Town's operative Official Plan, and was not brought into full force and effect until final Tribunal approval dated May 29, 2018; and

WHEREAS the Official Plan accordingly reflects planning policy developed in advance of numerous Provincial Planning Statements, and hundreds of provincial legislative changes, and in advance of the current period of intensification and development activity within the Town; and

WHEREAS the Town has initiated and is proceeding with an Official Plan Review and Update pursuant to RFP 24-PLN-2026 on April 13, 2026; and

WHEREAS the Cobourg East Community Secondary Plan Update and associated Schedule "C" Municipal Class Environmental Assessment are also underway in conjunction with the County of Northumberland; and

WHEREAS the Town has received and continues to receive applications for site-specific Official Plan and Zoning By-law amendments seeking building heights in excess of those contemplated by the Official Plan, including within the Main Central Area and on lands in proximity to the waterfront; and

WHEREAS Council is concerned that the Official Plan and Zoning By-law may not contain sufficient policy direction respecting building height, massing, transition and built form to permit such applications to be evaluated consistently and on a principled planning basis; and

WHEREAS Council recognizes that policies emerging from the Official Plan Review will not be in force and effect until adopted, approved and free of appeal, and that a period

may arise in which emerging policy direction exists but is not yet operative; and

WHEREAS Section 38 of the Planning Act permits a municipality to pass an interim control by-law where Council has directed that a review or study be undertaken in respect of land use planning policies, and Council wishes to receive professional planning and legal advice as to whether, and at what stage, such a by-law would be necessary and appropriate.

NOW THEREFORE BE IT RESOLVED THAT Council hereby confirms that its direction respecting the Official Plan Review and Update includes a review of policies respecting building height, massing, transition and built form, and directs staff to instruct the Official Plan Review consultant to advance that subject matter as an early and discrete phase of the work program, with draft policy directions reported to Council no later than _____, 2026; and

FURTHER THAT the Director of Development, in consultation with the Municipal Solicitor and the Official Plan Review consultant, advise Council on:

whether an interim control by-law under Section 38 of the Planning Act is necessary to protect the integrity of the Official Plan Review, having regard to the pipeline report in paragraph 2

if so, the phase or trigger point in the Official Plan Review at which such a by-law would be brought forward, and whether its one-year term and two-year maximum can reasonably span the period from that trigger to policy coming into force, having regard to the Town's prior experience with approval and appeal timelines;

the appropriate geographic scope and height thresholds, aligned to the study area rather than to specific lands or applications;

the effect of any such by-law on applications already filed on approvals already granted, and on matters before or capable of coming before the Ontario Land Tribunal, and whether such a by-law would in fact achieve Council's objective;

the interaction of any such by-law with the Cobourg East Community Secondary Plan

Update and associated Class Environmental Assessment; and
resource, budget and schedule implications; and

FURTHER THAT Council direct Staff, in preparing the report, to have specific regard to *Hummel Properties Inc. v. Niagara-on-the-Lake (Town)** (Ont. C.A., 2022) and the related legal precedent respecting improper purpose and bad faith in the enactment of interim control by-laws, and to advise Council with respect to:

the requirement that any interim control by-law be founded upon a genuine land use planning review directed by Council, and be confined to the regulation of the use of land;

the risk that a by-law found to be directed at particular applications, applicants or lands may be quashed, including on an application under Section 273 of the *Municipal Act, 2001*

the risk that an interim control by-law enacted while the Official Plan Review is underway may be characterized as pre-empting the outcome of that Review;

any resulting exposure to the Town and its members; and

the documentary record that would be required to support any such by-law, with any legal advice to be provided to Council in closed session pursuant to Section 239(2)(f) of the **Municipal Act, 2001** as the Municipal Solicitor considers appropriate; and

FURTHER THAT Council direct staff to report back on the current development pipeline, identifying the number, scale, location and status of applications and pre-consultation inquiries seeking building height in excess of that provided for in the Official Plan, together with an assessment of the extent to which the outcome of the Official Plan Review may be prejudiced by applications proceeding in advance of the emerging policy direction; and

FURTHER THAT Council direct Staff to report back on the feasibility, timing and risks of bringing forward an early standalone Official Plan Amendment addressing building height, massing and transition in advance of the comprehensive Official Plan Update, together with any corresponding Zoning By-law amendment, as an alternative or complement to an interim control by-law; and on other measures including holding

provisions under Section 36 of the Planning Act, urban design guidelines, site plan control, and a community planning permit system; and

FURTHER THAT pending receipt of the draft policy directions contemplated in paragraph 1, Council states its position that it is not presently prepared to support site-specific Official Plan or Zoning By-law amendment applications seeking building height in excess of that provided for in the Official Plan, and directs staff to so advise prospective applicants at pre-consultation and to address this position in staff reports; provided that nothing in this resolution shall be taken to fetter or limit the obligation of Council to consider each application on its individual merits, on the evidence and submissions before it, in accordance with the Planning Act; and

FURTHER THAT Council direct Staff to bring forward, arising from the priority phase referred to in paragraph 1, interim height, massing and transition evaluation criteria to be applied in the assessment of applications received prior to the Official Plan Update coming into force; and

FURTHER THAT Council direct the reports contemplated in paragraphs 2 through 5 be brought forward to Council no later than _____, 2026/2027; and

FURTHER THAT Council direct Staff to forward this resolution to the Chief Administrative Officer, the Director of Planning and Development, the Municipal Solicitor, the Municipal Clerk, the Official Plan Review consultant, and the County of Northumberland.