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**To:** Mayor and Members of Council

**From:** Ryan Windle, Director of Planning and Development Services

**Date:** November 22, 2021

**File No.:** COPA2021-0003 & ZBA2021-0011

**Re:** **Implementing By-laws for Municipally Initiated Official Plan Amendment and Zoning Amendment for Additional Dwelling Units**

## Preamble

On November 1, 2021, Council approved Staff recommendations for an Official Plan Amendment (OPA 129) and a Zoning Bylaw Amendment (2021-082) to increase permissions for Additional Dwelling Units (ADUs) in the Municipality. The general purpose of these Amendments is to increase the supply of affordable housing units in Clarington (See Report [PDS-055-21](#)).

Prior to final approval of Staff's recommendation, Council approved some language modifications to the recommended OPA and Zoning By-law Amendment. However, the implementing by-laws were not approved on November 1, 2021 and have therefore been included on the November 22, 2021 agenda for Council consideration. Since the November 1 meeting, Planning Staff have consulted with the Clerk and the Municipal Solicitor and have taken some time to consider the Council approved language. Through this review, Staff have identified some concerns regarding the functionality and legality of the language and the potential for misinterpretations, confusion, and loopholes in applying the policies and/or regulations.

To address these legal and interpretation concerns, Staff is recommending that Council, consider additional Staff revisions to ensure the clarity and useability of the OP and Zoning By-law while, in Staff's opinion, preserving the intent of Council's revisions. In general, these revisions include: removal in entirety or in part particular references to "Official Plan" and/or "Zoning By-law" as they are not interchangeable; deletion of references to "Hazard Lands" and "Regulatory Shoreline Area" understanding that land use permissions/prohibitions are already provided in existing sections of the OP; insertion of the reference to Environmental Protection "Zone" within the Zoning By-law as opposed to the reference to Environmental Protection "Area", which is an OP designation; and the preservation of the language related to permissions/prohibitions in the Protected

Countryside areas of the Municipality that are governed by the Greenbelt Plan.

The purpose of this memo is to offer revised language as a compromise along with background and commentary to support Staff's recommendation. The language proposed is illustrated in four (4) text boxes in the body of the memo for ease of reference. If Council is amendable to the changes, Staff recommend that Council 1) approve OPA 129 as amended, and 2) approve the implementing Zoning By-law, as illustrated in **Attachment 1** to this memo. For reference, a table illustrating Staff's originally recommended language, Council's approved language and Staff's recommended revisions is provided in strike through/red mark-up format as **Attachment 2**.

In Staff's opinion, the recommended language results in more reader friendly and functional documents that minimizes risk of challenge and/or misinterpretations. This is to the benefit of the community at large as property owners navigate the updated permissions for ADU's and provide clarity to Staff in applying and interpreting the documents, both of which would assist in speeding up the approvals process.

### **Background**

On November 1, 2021, Council passed **Resolution #C-361-21** which reads as follows:

*That Report PDS-055-21 be received;*

*That the Official Plan Amendment 129, attached to PDS-055-21 as Attachment 3, be approved;*

*That the Zoning Bylaw Amendment, attached to PDS-055-21 as Attachment 4, be approved;*

*That Staff from Legislative Services present to Council a new Bylaw to replace Bylaw 97-77 to require Additional Dwelling Units be registered with the Municipality;*

*That staff approve applications for Additional Dwelling Units only after Council approves the new Bylaw to replace Bylaw 97-77 to require Additional Dwelling Units be registered with Municipality;*

*That Staff be directed to request in writing the Ministry of Municipal Affairs and Housing review the restrictions to provide further flexibility for Additional Dwelling Units within the Greenbelt Plan and the Oak Ridges Moraine Conservation Plan;*

*That Staff monitor the implementation of these Amendments for Additional Dwelling Units for one (1) year after approval of the Amendments and report this monitoring to Council with any recommended changes to policies, standards, or processes; and*

*That all interested parties listed in Report PDS-055-21 and any delegations be advised of Council's decision.*

Additionally, Council approved the following Resolutions amending the Staff proposed implementing By-laws for both the OPA (OPA 129) and the Zoning By-law Amendment. Specifically, Council passed the following resolutions:

**Resolution #C-362-21**

*That the foregoing Resolution #C-361-21 be amended with the following changes to Attachment 3, Official Plan Amendment 129, Section 2, Subsection 6.3.7 and 6.3.8:*

*"That the words "outside of the Environmental Protection Area as identified in this Official Plan" be replaced with "outside of the Environmental Protection Area as identified in the Zoning By-law.""*

**Resolution #C-363-21**

*That the foregoing Resolution #C-361-21 be amended with the following changes to Attachment 4, the Zoning Bylaw Amendment, Section 4, Subsection 3.2 b and 3.2 c:*

*"That the words "Clarington Official Plan" be replaced with "Zoning By-law.""*

**Effect of Council Revisions**

Given that the implementing by-laws for the OPA and the Zoning By-law Amendment have not yet been approved, Staff has identified functional, legal, and interpretive problems with the above noted Council revisions.

**OPA 129**

The following is an illustration showing the original OPA 129 language proposed by Staff for Policy 6.3.7 and Policy 6.3.8 with the final language approved by Council in strike through/red mark-up format:

6.3.7 Notwithstanding 6.3.5, within the Protected Countryside of the Greenbelt Plan, but outside of Environmental Protection Area as identified in ~~this Official Plan~~ **the Zoning Bylaw**, one *additional dwelling unit* is only permitted within either a *single detached dwelling* or an accessory building that existed on (or building permits were issued prior to) July 1, 2017.

6.3.8 Notwithstanding 6.3.5, *additional dwelling units* are not permitted within Hazard Lands including the Regulatory Shoreline Area as identified in ~~this Official Plan~~ **the Zoning Bylaw**.

Regarding Policy 6.3.7, the term "Environmental Protection Area" specifically refers to a designation within the OP and is not referenced in the Zoning By-law. Staff suggests that this would cause confusion for readers when applying the policy and may open a legal loophole considering the Zoning By-law does not include a zone titled Environmental Protection "Area". Staff suggests that if the intent is to state clearly that ADU's are not permitted in the Environmental Protection "Zone" then this reference would be more appropriate in the Zoning By-law (Staff is suggesting this revision later in this Memo).

To address these concerns Staff recommends that the reference to “Environmental Protection Area” be deleted in its entirety including the reference to the OP or the Zoning By-law. The policy language related to the land use limitations on ADU’s in the Protected Countryside of the Greenbelt Plan would be preserved as it reflects conformity with the Greenbelt Plan and was not identified as a concern. In Staff’s opinion, this results in a clearer policy for the readers and removes the risk of loopholes in interpretation and/or conflicts with other policies of the OP.

Regarding Policy 6.3.8., the terms “Hazard Lands” and “Regulatory Shoreline Area” are also terms that are specific to the OP and do not appear as zones in the Zoning By-law. Therefore, the replacing of the words “Official Plan” with “Zoning By-law” would create an incorrect reference. In Staff’s opinion, this would jeopardize the usefulness and/or applicability of the policy, create potential confusion for the reader and pose the risk of misinterpretation that ADU’s would be permitted in Hazard Lands and/or Regulatory Shoreline Areas.

To address these concerns, Staff suggest that Policy 6.3.8 be deleted in its entirety. The original intent was to provide a direct policy that prohibited ADU’s in Hazard Lands and the Regulatory Shoreline Area. However, upon re-consideration Staff note that existing polices within the OP (Section 3.7) adequately include policies that prohibit development in these areas.

Based on the above, Staff suggest the following language be included in the final version of OPA 129. For reference, a table is provided as **Attachment 2** that summarizes the original language proposed by Staff, the Council approved language and the currently suggested wording.

**Compromise #1 – OPA Policy 6.3.7**

6.3.7 Notwithstanding 6.3.5, within the Protected Countryside of the Greenbelt Plan, one *additional dwelling unit* is only permitted within either a *single detached dwelling* or an accessory building that existed on (or building permits were issued prior to) July 1, 2017.

**Compromise #2 – OPA Policy 6.3.8**

~~6.3.8 Notwithstanding 6.3.5, *additional dwelling units* are not permitted within Hazard-Lands including the Regulatory Shoreline Area as identified in ~~this Official Plan the~~ **Zoning Bylaw.**~~

(Remove entirely, renumber subsequent sections)

## Zoning By-law Amendment (By-law 2021-82)

The following is an illustration showing the original Zoning By-law amendment language proposed by Staff for Clause 3.2b and Clause 3.2c with the final language approved by Council in strike through/red mark-up format:

3.2b. Notwithstanding 3.2 a., *additional dwelling units* are not permitted within the Environmental Protection Area or Hazard Land, including the Regulatory Shoreline Area, as identified in the Clarington ~~Official Plan~~ **Zoning Bylaw**.

3.2c. Notwithstanding 3.2 a., *additional dwelling units* are only permitted within *single detached dwellings or accessory buildings* that existed on (or where building permits were issued prior to) July 1, 2017, for lands within the Protected Countryside within the Greenbelt Plan, if located outside of the Environmental Protection Area or Hazard Land, including the Regulatory Shoreline Area as identified in the Clarington ~~Official Plan~~ **Zoning Bylaw**.

Regarding Clause 3.2b, the reference to the Zoning By-law causes the same issues as stated for Policy 6.3.7 above. The zoning regulation as approved would result in references to prohibitions within “Environmental Protection Area”, “Hazard Land”, and “Regulatory Shoreline Area”, all of which are specific to the OP and not referenced in the Zoning By-law. As a compromise, Staff suggest that the wording be simplified to clearly prohibit ADU’s within the Environmental Protection (EP) “Zone”, which is a zone that appears in the Zoning By-law. This is consistent with current general EP zoning regulations that already prohibit residential development in the EP Zone. Additionally, this would be consistent with what Staff believes was the intent of Council which was to prohibit ADU’s in the EP zone within the current in effect Zoning By-law 84-63.

Regarding Clause 3.2c, the approved language once again references “Environmental Protection Area”, “Hazard Land” and “Regulatory Shoreline Area”, which are designations specific to the OP. Similar to the comments on Policy 6.3.7 and 6.3.8 above, replacing of the words “Official Plan” with “Zoning By-law” would create an incorrect reference. In Staff’s opinion, this would jeopardize the usefulness and/or applicability of the regulation, create potential confusion for the reader and pose the risk of misinterpretation that ADU’s would be permitted in Hazard Lands and Regulatory Shoreline Areas.

To address these concerns Staff recommends that the reference to “Environmental Protection Area”, “Hazard Land”, and “Regulatory Shoreline Area” be deleted in its entirety including the reference to the OP or the Zoning By-law. The policy language related to the land use limitations on ADU’s in the Protected Countryside of the Greenbelt Plan would remain as it reflects conformity with the Greenbelt Plan and was not identified as a concern. In Staff’s opinion, this results in a clearer zoning regulation that informs the reader of the specific limitations within the Protected Countryside areas as defined in the Greenbelt Plan.

Based on the above, Staff suggest the following language be included in the final version of the Zoning By-law Amendment (By-law 2021-82). For reference, a table is provided as **Attachment 2** that summarizes the original language proposed by Staff, the Council approved language and the currently suggested wording.

**Compromise #3 – ZBA Clause 3.2b**

3.2 b. Notwithstanding 3.2 a., *additional dwelling units* are not permitted within the Environmental Protection **Zone**.

**Compromise #4 – ZBA Clause 3.2c**

3.2 c. Notwithstanding 3.2 a., *additional dwelling units* are only permitted within *single detached dwellings or accessory buildings* that existed on (or where building permits were issued prior to) July 1, 2017, for lands within the Protected Countryside within the Greenbelt Plan.

**Recommendation**

Upon consideration of the above, Staff respectfully request that Council endorse the recommended language as outlined in this Memo and adopt updated OPA 129 and Zoning By-law 2021-82 as proposed in **Attachment 1**.

In addition, Staff recommend that By-law 2021-081, being a By-law to license and regulate Additional Dwelling Units in the Municipality of Clarington, as prepared by the Legal Service Department, be approved at this time.

Best regards,



Ryan Windle,

cc. Andy Allison, CAO  
Department Heads  
Mark Jull  
Lisa Backus  
Carlos Salazar