



Planning and Development Services

Prepared for: Regular Council

Report: PDS-82-2023

Meeting Date: December 18, 2023

File: 310201

1. Title

Recommendation Report on Proposed Official Plan and Zoning Bylaw Amendments for the Implementation of Land Use Policies and Regulations regarding Short Term Rentals in the Town of Fort Erie

2. Recommendations

That: Council approves the amendment to the Town's Official Plan and Zoning By-law 129-90, as amended, as detailed in Report Number PDS-82-2023, and further

That: Council directs Staff to submit the necessary By-laws; and further

That: Council directs Staff to submit a report on proposed changes to the Business Licensing Bylaw 217-05, Schedule "13" as amended (Short-Term Rentals).

3. Relation to Council's Corporate Strategic Plan

Priority: Comprehensive housing options

Initiative: 6.1 Update Town Planning and Policy documents to reflect community core housing needs (adequacy, suitability and affordability), proper housing mix and housing options.

Priority: Economic prosperity and diversification

Initiative: 4.6 Balance visitor accommodation options that support economic development and diversification

4. List of Stakeholders

Corporation of the Town of Fort Erie

Short-Term Rental Owners, Operators and related Industry Associations

Fort Erie Residents

Visitors to Fort Erie

BIAs and Business Owners

Short Term Rental Community Focus Group

5. Purpose of Report

The purpose of this report is to provide information and a staff recommendation to Council

regarding proposed Official Plan and Zoning Bylaw amendments to incorporate land use policies and regulations pertaining to short term rentals (STRs) and to provide next steps in terms of a future report outlining proposed changes to the Town's licensing bylaw including the STR license cap and current waitlist.

6. Analysis

Background

On December 13, 2021, Council accepted staff Report No. PDS-106-2021, which authorized staff to hire a consultant to undertake a study on STRs in the municipality with a focus on land use and where STRs should be a permitted use. This was in response to an increasing number of by-law enforcement related complaints regarding STRs within the Town. On August 22, 2022, WSP Canada Inc. was retained to complete the three-phase project which included:

1. Background Analysis, including best practice and legal review
2. Land Use Options and Recommendations
3. Official Plan and Zoning Bylaw Amendments

A 21-member community focus group was also appointed by Council in October 2022 to provide feedback from a variety of perspectives and stakeholder groups.

In May of 2023, the completed land use study prepared by WSP Canada Inc. was presented to Council within Report No. PDS-41-2023. The report was accepted by Council as well as recommendations to proceed with initiating formal amendments to the Town's Official Plan and Zoning By-law to implement the study's recommendations. Additionally, Council provided direction to staff to amend By-law 98-2022, the STR licensing by-law, to incorporate new definitions. The full review and analysis of the STR Land Use Study is outlined in Report No. PDS-41-2023.

On September 11, 2023, a draft Official Plan and Zoning Bylaw amendment was presented to the public and members of Council as part of a statutory public meeting. A number of public and council submissions were made as part of the public consultation process. The Town's consultant and Town planning staff have reviewed the comments received to date and have revised the draft amendments accordingly. The draft Official Plan Amendment can be found in Appendix 1 and the draft Zoning Bylaw Amendment can be found in Appendix 2. A summary of the changes can be found below:

Draft Official Plan Changes

Based on the STR Land Use Study completed by WSP Group and the comments received as part of the public consultation process Planning staff have revised the draft Official Plan Amendment, which can be found in Appendix 1. No changes have been made to the proposed Official Plan Amendment since the Public Meeting.

If approved by Council, the Official Plan Amendment would generally permit Owner Occupied STRs throughout the Town where residential uses are permitted, while limiting Dedicated STRs

to areas of Crystal Beach and commercial areas. Staff have also presented Council with the option of including waterfront areas. The purpose of presenting the option for the waterfront areas is that some members of Council and the Public expressed an interest in support of Legacy STRs, which are homes and cottages predominantly along the waterfront which have historically been rented on a short-term basis. The inclusion of waterfront areas has not been fully studied in the work completed by the Town's consultant, but it is acknowledged that there are a number of currently licensed STRs within these waterfront zones and more on the waiting list to receive a license.

Draft Zoning Bylaw Amendment Changes

Since the public meeting there have been a number of proposed changes to the draft zoning bylaw. These include:

- Reduction to the number of required parking spaces for STRs
- Removal of the limit of 3 bedrooms (still limited through licensing bylaw)

There were a number of public comments raised about the addition of an STR type that would allow for a limited period of short term rentals every year for homes that have a legacy of cottage rentals. Town Staff have explored this option but have concluded that this would result in significant licencing and enforcement challenges. Further discussion on Legacy STRs can be found in Section 9 of this report. As an alternative to the addition of a third STR type, staff are presenting an alternative option to allow Dedicated STRs within waterfront zones (16 – Waterfront Residential & 16A Waterfront Rural Residential), which could capture many of these Legacy cottage rentals.

Planning Context

The [WSP Short Term Rental Land Use Study](#) provides a fulsome review of the applicable planning policy context for STRs in Ontario. A summary of the planning policy context is found below:

Provincial Policy Statement (2020) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

The Provincial Policy Statement does not speak directly to STRs but does provide high level support for the provision of affordable housing required to meet the needs of current and future residents (Section 1.4.3) as well as the support for long-term economic prosperity by providing opportunities for sustainable tourism development.

In alignment with the Provincial Policy Statement, the Growth Plan provides support for complete communities contributing to high quality of life and human health, providing a balance of jobs and housing. The municipality needs to support a diverse range of housing types and establish goals for affordable housing.

Staff believe that the Official Plan Amendment and Zoning Bylaw Amendment found in Appendix 1 and 2 are in alignment with the Provincial Policy Statement and Growth Plan as they provide a balance between the need to provide housing to the Town's current and future residents as well as providing limited short-term rental opportunities to support the local tourism economy.

Niagara Official Plan, 2022

Similar to the PPS and Growth Plan, the Niagara Official Plan does not speak directly on STRs but does provide support for a mix and range of housing options and tourism related economic development. The proposed Official Plan and Zoning Amendment implementing STR policy and regulations are in alignment with the Niagara Official Plan.

Town of Fort Erie Official Plan, 2011

The Town's Official Plan currently has no policies specifically regarding STRs, however, it does contain policies in support of a diversified economy including tourism, and strong, livable and healthy communities providing a full range of housing options. The Official Plan also places value on having a variety of housing tenures including home ownership and long-term rental options. STRs do have an impact on these two types of housing options reducing the overall housing stock, however, planning staff have presented an Official Plan and Zoning Amendment, which, together with license controls, can strike a balance between supporting tourism and providing housing. The draft Official Plan amendment can be found in Appendix 1.

Town of Fort Erie Zoning Bylaw 129-90

The Town's Zoning Bylaw does not currently have any regulations or definitions regarding STRs. The proposed zoning amendment would add new definitions for STR including Owner Occupied STR and Dedicated STR. The amendment would permit these STRs within permitted dwelling units, secondary units and accessory dwelling units. Owner Occupied units would only be permitted within zones that allow for both a principle dwelling unit and an accessory dwelling unit to allow for one unit for the owner and one for the rental. The draft zoning bylaw amendment can be found in Appendix 2.

7. Financial, Staffing and Accessibility (AODA) Implications

The STR Land Use Study Project being completed by WSP Group has been budgeted within the Town's Operating Budget. There are no costs associated with implementing the proposed Official Plan and Zoning Amendments unless appealed to the Ontario Land Tribunal (OLT). There may be financial and staffing implications associated with changes to the Licensing Bylaw. If Council were to increase the number of licenses issued under the Town's licensing bylaw, additional staffing resources in EDTS, Bylaw, Fire, Planning, and Building may be required to receive, process, and issue licences along with conduct inspections.

There are no AODA implications.

8. Policies Affecting Proposal

In addition to the proposed Official Plan and Zoning By-law Amendments, Licensing By-Law 217-05, Schedule “13”, as amended will require an amendment to align with the definitions within the Official Plan and Zoning Bylaw Amendments. In addition to new definitions, the cap on STR licenses will need to be reviewed to determine if they should be increased based on new policy and regulations. The amendments to the licensing bylaw be brought forward to Council in a future report following approval of the Official Plan and Zoning Amendments. This timing takes into consideration the possibilities of appeal to the planning amendments which may have an impact on changes to the licensing bylaw.

9. Comments from Departments, Community and Corporate Partners

Comments received prior to the September 11th public meeting can be found within Report No. PDS-41-2023.

A number of comments were raised by members of the public and Council during the statutory public meeting held on September 11th. A summary of these comments and staff’s response can be found below:

Owner Occupied SRT requires Owner present at time of rental

Comments were raised by a member of the public stating that in the previous work presented to Council and the public there was no requirement for the Owner to be present at the time of rental. The member of the public requested that consideration be given for the owner not being present at the time of rental.

The Land Use Study completed by WSP and presented as part of PDS-41-2023 in May of 2023 provided to the Town provided a number of recommendations. The first recommendation was to create two new definitions for STRs. The Recommendation states:

“Add two definitions for STRs in the OP and the ZBL that reflect the definition used in the licensing By-law. One of these definitions should apply to STRs that are a principle use (vacant and only used as a STR) and the other definition should apply to STRs that are owner-occupied (where the owner is present at all times).”

The proposed definition for Owner Occupied STR in the draft bylaw remains consistent with the WSP recommendation. Owner Occupied STRs are proposed to be permitted in all zones of the Town where a principal dwelling and an accessory dwelling unit are permitted as there is general agreement that if the Owner is present at the time of rental, there is a lower potential for various licencing by-law violations (ie. noise, nuisance etc).

Legacy STR

During the Public Meeting comments were raised regarding the addition of a new category of STR which would allow for dwellings that have been historically used as cottage rentals and generationally owned to be permitted to rent for a limited period of time.

Planning Staff have investigated this option and have discussed how this option could be implemented with other departments including EDTS, Building, Fire and Bylaw. Staff have also discussed this approach with other municipalities that have adopted similar approaches, including Prince Edward County. Although allowing a primary dwelling unit to be used as an STR for only a portion of the year may address some of the concerns from the public and Council, it would create challenges in terms of licensing and enforcement. From a licensing perspective it would create a two-tiered system of permit fees and scheduling requiring significant staff time. Enforcement would be complicated by the temporal nature of the STR as well based on discussions with other municipalities that allow similar types of STR's to operate 45 days out of the year.

Planning staff have included as an alternative option permitting Dedicated STRs within waterfront zones, to capture many of these Legacy STRs.

Parking

The first draft of the proposed zoning bylaw presented a parking space requirement of one space per bedroom for a short-term rental. Members of Council and the Public noted that this requirement may be too restrictive. Staff have reviewed this concern and are recommending a lower parking requirement of one space for 1-2 bedrooms, and two spaces for three or more rooms. This is to recognize that under the Town's licensing bylaw, there can be up to six occupants of a 2-bedroom STR, which could fit within one vehicle, but a 3-bedroom STR could accommodate up to 8 people, which could not fit in within typical vehicles.

While a parking space requirement based on number of rooms is not typical in terms of zoning regulations, for the purposes of STR's they can be appropriate as STR users in Fort Erie will generally require private vehicles to visit the unit.

Number of Rooms

There was a concern raised regarding the proposed cap of three bedrooms for a STR within the zoning bylaw. The three-bedroom cap is already established within the licensing bylaw, however, for simplicity it has been removed from the draft STR Zoning Bylaw.

Non-Conforming/Grandfathering

In Planning [Report PDS-59-2023](#), which was presented to Council on September 11th, 2023, planning staff provided previous Town legal Council opinion regarding the grandfathering of existing licensed STRs. A member of the public raised concern with this opinion in that these STRs should not be given legal non-conforming status. Council provided direction to staff to obtain a second legal opinion regarding STRs.

Mr. Callum Shedden from Daniel and Partners LLP provided a second legal opinion dated November 29th, 2023. Mr. Shedden agrees with the original legal opinion of Ms. Stirton regarding the legal non-conforming status of the STR after any Zoning Bylaw Amendment may

come into effect. STRs legally operating under the current zoning by-law would be able to continue as legal non-conforming uses and would remain eligible for license renewal. The Town does not have the authority to deny a license renewal based on the location of the STR alone.

In summary, based on the two legal opinions obtained by the Town, currently licensed STRs would become legal non-conforming if they did not conform to the proposed zoning bylaw amendment. The Town would not have the ability to deny a license renewal to these STRs if the only reason for that denial was based on its zoning (or location).

History of Cottage Rental or Unique Business Opportunity – OPA

A member of the public questioned the intent of the Official Plan policy which allows consideration of STRs within areas not permitted in the proposed Zoning Bylaw if the STR has a history of cottage rental or represented a unique business opportunity.

Recognizing that there is a long history of STRs in the Town and that not all of these STRs would be located within a permitted zone, the consultant and staff would want to allow flexibility in the Official Plan policy to permit these through a zoning bylaw amendment or minor variance. This would help address the concerns regarding Legacy STRs by providing Official Plan policy that supports long standing STRs.

Streamlined Process

A streamlined process was presented as a recommendation within the STR Land Use study prepared by WSP. If Council supports the Official Plan Amendment and Zoning Amendment as proposed, the following options would be available to land owners who are not located within a zone that would permit an STR:

- Zoning Bylaw Amendment (Major)
 - Applications come before Council for consideration and decision
 - 2023 Fee: \$9,359.00
 - Larger public consultation process and greater appeal rights
 - Lengthy process that can take up to 90 days
- Zoning Bylaw Amendment (Minor)
 - Applications come before Council for consideration and decision
 - 2023 Fee: \$3,743.00
 - Larger public consultation process and greater appeal rights
 - Combined public meeting and recommendation report could result in a shorter approval timeline than major amendments.
- Minor Variance
 - Applications come before Committee of Adjustment for consideration and decision
 - 2023 Fee: \$1,334.00
 - Less public consultation and no appeal rights for neighbours

- Most expedient process at 30 to 40 days to decision from application
- Not typically used to permit new uses

Planning staff could direct most applications for new STR's through a Minor Zoning Bylaw Amendment process if this is the direction Council wishes staff to take as it would combine both the information report, public meeting and recommendation report all within one Council meeting. This allows Council to remain the approval authority while processing applications quicker than a standard zoning amendment. In some cases, such as where a new STR is being proposed adjacent to an area that permits STR's as of right, staff could also consider minor variance applications.

Waterfront

Allowing STR's within waterfront zones has been provided as an alternative option in the last two reports to Council. The STR land use policy did not specifically review the impacts of Dedicated STRs within waterfront zones and therefore did not include waterfront zones as permitted zones for dedicated STRs. Under the proposed Official Plan and Zoning Amendment, Owner Occupied STRs would be permitted in waterfront zones. Planning Staff have an alternative option to include Dedicated STRs within waterfront zones which may address some of the concerns regarding Legacy STRs as well as a number of STRs currently licensed and on the waiting list within those zones.

Legislative Context

Over the last few months the topic of STRs has become a national issue due to its impact on housing availability primarily in large cities and its impact on the hotel industry. STRs do have an impact on available housing by reducing the availability of houses for permanent residents and longer-term rentals. Many municipalities have reduced or prohibited new dedicated STRs to protect housing stock while continuing to allow for Owner-Occupied STRs. There have been recent announcements in other Provinces, such as British Columbia restricting dedicated STRs, and at a federal level removing tax incentives.

Planning staff believe that the licensing bylaw and cap on the number of Dedicated STRs will play an important part in regulating the number of STRs in the Town, while the proposed Official Plan and Zoning Bylaw will identify the appropriate locations and zoning regulations for STRs.

Licensing Bylaw

During the public meeting there was discussion regarding the need to review the Town's STR licensing bylaw, specifically the current cap on STR licenses. The Town currently has a cap of 250 STR licenses, the majority of which are dedicated STRs. Some comments were raised that there was an intent to raise the number of licenses following the completion of the land use planning amendments. EDTS staff will bring forward a future report on the options for changing the current license cap, including staffing and financial implications, following the final approval of any amendments. This timing allows for staff to have a better understanding of Council's

direction in terms of the waterfront area, and allows time to see if there are any appeals to the planning bylaws.

If the draft amendments are approved, at a minimum the licensing bylaw will need to be updated to align with the new STR definitions including Dedicated and Owner Occupied.

EDTS staff plans to receive, process and issue STR licence renewals for 2024 under the current rules and regulations set out in By-law No. [217-05](#), Schedule 13, as amended. STR licences will expire on December 31, 2023.

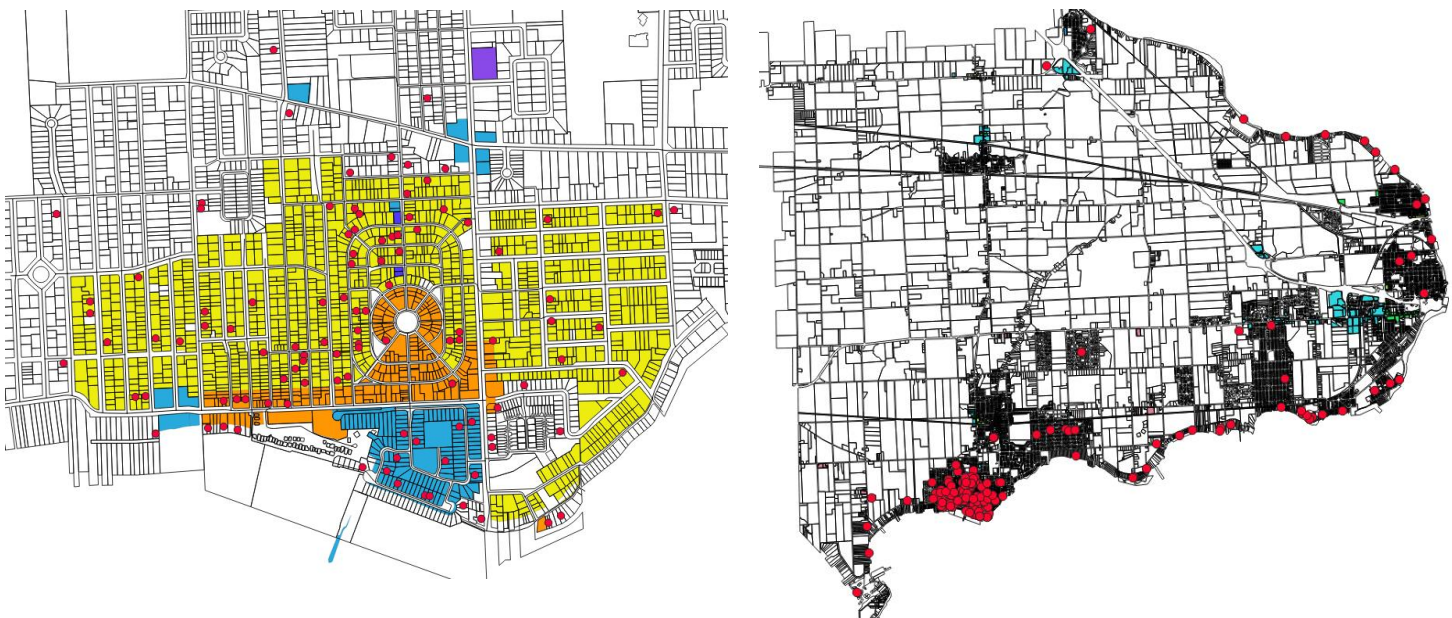
EDTS will only accept renewal applications and issue renewal licences.

The CAO and other relevant staff members have been consulted on the plan to receive, process and issue STR licence renewals in accordance with the rules and regulations. This will allow the continuation of licence renewals and inspections without creating delays and/or potential backlogs pending the land use planning amendments and subsequent appeal period if approved by Council.

10. Alternatives

Allowing dedicated STRs within the waterfront zones has been listed as an alternative option on the two previous staff reports, however no direction has been provided by Council. Council could consider permitting Dedicated STRs within both the Waterfront Residential Zone (16) and Waterfront Rural Residential Zone (16A), however, this option has not been studied by the Town's consultant.

The two maps below show the location of licensed STRs in Crystal Beach and in the Town as a whole.



Below is a map that shows where Dedicated STRs would be permitted to be located based on the draft zoning bylaw in Appendix 2, as blue areas. The waterfront residential and waterfront rural

residential zones are shown in red.



While staff have not recommended the addition of waterfront zones based on it not being fully studied through the STR Land Use Study completed by WSP, there are a number of factors that could support this alternative including:

- The history of cottage rentals along the waterfront,
- The large number of currently licensed STRs within the waterfront zones and those on the license waiting list,
- Minimizing instances of STR legal non-conformance.

If Council were to move forward with this alternative, the draft Official Plan and Zoning Bylaw Amendments in Appendix 1 and 2 would need to be revised to add the following:

Official Plan Amendment

“2. IV. Dedicated STRs are generally permitted within commercial areas, tourist areas, select areas of the historic Crystal Beach neighbourhood **and waterfront areas.**”

Zoning Bylaw Amendment

“4. That Sections 12B, **16, 16A** 19, 20, 21, 22, 26, 26A, 26B, 26C, 26D and 26F be amended to include “Short-Term Rental, Dedicated” as a permitted use.”

Properties that are not zoned to permit Dedicated STRs could still apply for a minor zoning bylaw amendment. Planning staff could process these applications under a streamlined approvals process as noted earlier in this report. A proper planning review process would still occur to ensure that amendments to permit STRs conform to the Town's Official Plan policies.

The alternative options would have impacts to the licensing bylaw and caps, which would be reported on by EDTS in a future report following passage without appeal of the bylaw.

11. Communicating Results

The Town has provided regular updates regarding the STR land use study to the public through the use of the 'Let's Talk' webpage. The draft Official Plan and Zoning Bylaw found in Appendix 1 and 2 have been posted on the website for public review. If Council approves the amendments, a newspaper notice would be published in the local newspaper as well as on the Town's website.

12. Conclusion

Planning staff have completed their review of the WSP Land Use Study on STRs in the Town of Fort Erie, as well as the applicable planning policy and public comments received to date. Planning staff are recommending approval of the draft Official Plan and Zoning Bylaw Amendments found in Appendix 1 and 2, with the option of permitting Dedicated STRs within the waterfront areas.

Should Council approve the attached amendments, Economic Development and Tourism Staff would provide a further report regarding changes to the Licensing bylaw, following final approval of the amendments.

13. Report Approval

Prepared by:
Gerrit Boerema, MCIP, RPP
Manager of Policy and Community Planning

Submitted by:
Anamika Dilwaria, MCIP, RPP
Director of Planning and Development Services

Approved by:
Chris McQueen, MBA
Chief Administrative Officer

14. Attachments

Appendix 1 – Draft Official Plan Amendment
Appendix 2 – Draft Zoning Bylaw Amendment
Appendix 3 – Public Meeting Submissions