



## REPORT

### Planning and Development Council

Meeting Date: December 5, 2022

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**FROM:** Planning Services Department

**DATE:** November 22, 2022

**SUBJECT:** Public Meeting and Recommendation Report – Town-initiated Official Plan Amendments – Bill 109 - More Homes for Everyone Act, 2022 File No. 42.24.26 – By-laws 2022-122 and 2022-123

**LOCATION:** Town-wide

**WARD:** Town-wide

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#### RECOMMENDATION:

1. That the report titled “Public Meeting and Recommendation Report – Town-initiated Official Plan Amendments – Bill 109, *More Homes for Everyone Act*, 2022 – File No. 42.24.26”, be received;
2. That the proposed town-initiated Official Plan Amendments in response to Bill 109, *More Homes for Everyone Act*, 2022 be approved;
3. That By-law 2022-122, a by-law to adopt Official Plan Amendment 329, be passed;
4. That By-law 2022-123, a by-law to adopt Official Plan Amendment 53, be passed; and
5. That notice of Council’s decision reflects that Council has fully considered all the written and oral submissions relating to this matter and that those comments have been appropriately addressed.

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## **KEY FACTS:**

The following are key points for consideration with respect to this report:

- The town is proposing Official Plan Amendments (OPAs) to address changes made to the *Planning Act*, resulting from Bill 109, *More Homes for Everyone Act*, 2022, which received Royal Assent on April 14, 2022.
- Schedule 5 of Bill 109 made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications.
- The new legislation will require a municipality to refund planning application fees, on a sliding scale, if a decision is not made within the legislated timelines, as follows:
  - Within 120 days of submission of a combined Official Plan Amendment/Zoning By-law Amendment;
  - Within 90 days of submission of a Zoning By-law Amendment; and
  - Within 60 days of submission of a Site Plan Application.
- The above timelines for a municipality to make a decision without issuing a refund of fees on development applications could significantly reduce the ability to engage the public in a meaningful way as part of the application process.
- The proposed OPAs update the town's implementation policies in both the Livable Oakville Plan (OPA 53) and 1984 Oakville Official Plan (OPA 329) which would require the public to be informed prior to the submission of a development application.
- Staff has also reviewed options to streamline the development review process to avoid refunding planning fees, to the greatest extent possible.
- The loss of development application and Site Plan revenue could have a significant impact on the operating budget of the Planning Department as well as other commenting Town departments that participate in the development review processes.
- The loss of the foregoing revenue would likely have to be rolled into the general tax levy.

## **BACKGROUND:**

The Province's Bill 109, *More Homes for Everyone Act*, 2022, was introduced on March 30, 2022, and received Royal Assent on April 14, 2022. Bill 109 is reported to be the Province's first step in implementing the Ontario Housing Affordability Task Force Report recommendations. Town staff provided a report to Planning and Development Council on the Ontario Housing Affordability Task Force Report at its meeting of April 4, 2022. Town staff also provided a report to Town Council on Bill 109 at its meeting of April 25, 2022.

Schedule 5 of Bill 109 made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications.

The changes to the *Planning Act* apply punitive consequences in the form of gradual planning application fee refunds. The implementation of these measures is anticipated to have significant financial impacts to the Town.

These refunds will be from municipalities to applicants for site plan, zoning by-law and official plan amendment (where combined with a zoning by-law amendment application) fees if a decision is not made within the legislated timelines (Figure 1).

	<b>No Refund</b>	<b>50% Refund</b>	<b>75% refund</b>	<b>100% Refund</b>
<b>Zoning By- law Application</b>	Decision made within 90 days	Decision made within 91 and 149 days	Decision made within 150 and 209 days	Decision made 210 days or later
<b>Combined Official Plan Amendment and Zoning By-law Application</b>	Decision made within 120 days	Decision made within 121 and 179 days	Decision made within 180 and 239 days	Decision made 240 days or later
<b>Site Plan Application</b>	Decision made within 60 days	Decision made within 61 and 89 days	Decision made within 90 and 119 days	Decision made 120 days or later

Figure 1: Punitive schedule for planning application fee refunds

For the Town of Oakville, the 2022 activity rate forecast is \$2.9 million in planning application fees revenue. Assuming a similar activity rate forecast for 2023, when

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the new regulations for fee refunds take effect on January 1, 2023, approximately \$2.9 million could be at risk.

Any shortfall caused by the Province's fee refund changes will need to be covered by the tax levy, where current taxpayers will be responsible for covering the difference.

Regarding the development application process, this always involves review and collaboration between the municipality, agencies and the applicant, as well as engagement with the community and Council.

The timing and duration of this process is often beyond the municipality's control, as in the case of delayed responses and incomplete submissions from applicants. Another source of delay in the process comes from time spent waiting for comments from public agencies, including provincial ministries.

As a result of these changes to the *Planning Act*, the Town of Oakville has reviewed its planning application processes to accommodate the new timelines. In the face of external delays in a planning process and to avoid financial consequences to existing taxpayers from refunding fees, staff has explored options to streamline application review processes as discussed later in this report.

In response to the introduction of Bill 109, town of Oakville planning staff met with municipal partners across Halton Region, including Conservation Halton, to better understand the implications of Bill 109. The most significant impact is the potential of having to reimburse some, if not all, development application and site plan fees. This would significantly impact the municipal operating budget if applications are not processed within the legislative time frames. This could have further corporate implications beyond that of just Municipal planning departments, as other departments such as engineering, transportation, legal, parks, and Clerks may all realize financial hardships as they are indirectly funded from planning fees. Further, the need to expedite the planning approval process to avoid the refund of fees could also unduly impact the amount of public engagement that currently takes place.

Town staff undertook a financial analysis over the past 5 years of revenue generated from planning development and site plan applications and calculated the approximate amount of revenue that would have been refunded if the newly established timelines had not been met, which would be in the magnitude of nearly \$3 million per annum.

To respond to the pending condensed time frames for dealing with development applications and site plan applications, it is acknowledged that the current planning processes or status quo can no longer continue.

Bill 109 is slated to come into effect on January 1<sup>st</sup>, 2023, and any application submitted after that date will be subject to the new constraint timeframes respecting the refund of fees. In order to minimize the amount of revenue that would have to be returned to applicants, one implication of Bill 109 would be that any application submitted after January 1<sup>st</sup> would be prioritized over existing applications already with the town, as applications filed with the town prior to January 1<sup>st</sup>, 2023, are not governed by the Bill 109.

### **Moving beyond the Status Quo**

Town planning staff, in conjunction with its Municipal Partners from across Halton Region, considered various options as to how to respond to the new timelines. Some of the key principles and objectives that were identified as being required throughout the processing of such applications is to ensure an on-going active and meaningful citizen engagement throughout the planning and decision-making processes.

Another key objective is to ensure that, to the greatest extent possible, the refund of application fees is negated, if not kept to an absolute minimum, to minimize the impacts on municipal operating budgets. It will also be important to develop a consistent and predictable approach to processing development applications across the region, realizing the individual nuanced differences amongst each municipality that reflects its own local considerations.

Lastly, the review group has identified a unique approach wherein staff could work collaboratively with the development industry and applicants of planning applications to realize a successful outcome of the review of a development application within the prescribed time frames. This approach will be described further in the subsequent section.

### **Development Application Process Changes (Official Plan Amendment/Zoning By-law Amendment)**

#### **Option 1 (Staff recommendation based on initial submission)**

The option of an applicant choosing not to pro-actively work with the town, being the pre-submission review of technical studies, could lead to a greater likelihood that applications may be refused. The Bill 109 streamlined processing timeline will not allow for the current practice of multiple modifications, re-circulations and extended review times to occur. Instead, in order to bring a recommendation report forward to Council within the prescribed timeframes, staff will only be able to review the initial submission, assess it against applicable provincial, regional and municipal planning policies and objectives, and make a recommendation to Council based on that initial proposal. As such, there may be fewer opportunities to work with an applicant to

refine and modify a proposal in the context of the required multiple circulations of the application to consider such changes.

### **Option 2 (Voluntary front ending the review outside of a formal submission)**

The option of an applicant voluntarily working pro-actively with the town would be treated as a two-stage pre-consultation process, wherein an initial pre-consultation process with written comments would allow the applicant to revise its proposal to address many of the technical concerns identified at the original pre-consultation meeting. More specifically, the pre-consultation meeting will identify the reports/studies plans that need to be submitted for a complete application. As part of this voluntary process, an applicant could choose to submit the technical studies as part of a voluntary pre-submission review before submitting the actual Development Application. This way, the prescribed timeframe would not commence and the applicant could have the benefit of getting substantive feedback on the technical studies even before an application is submitted. As the review of technical studies is such a huge part of the overall Application review process, the “pre-review/endorsement” of these studies could free up capacity during the second, formal review of an actual application on public engagement and evaluating the overall merits of the development proposal itself.

### **Additional Changes**

As part of additional revisions to the administrative steps in processing Development Applications within the newly prescribed timeframes, staff is also in the process of updating its Standardized Terms of References (TOR) across the Region, which are intended to provide clear expectations/directions and lessen the potential of refusal recommendations. By updating these TORs, and by requiring submitted studies to strictly adhere to these TORs, it is anticipated that the review of the technical studies themselves will be more streamlined. The voluntary, Option 2 pre-submission review process will allow for multiple circulations of the studies to advance a proposal to a point where technical issues have been addressed prior to the formal application submission and a staff recommendation to Council. A pre-submission review fee will be credited toward the complete application fee, provided the application is submitted within two years of the start of the pre-submission review process.

However, to expedite development applications as best as possible considering the shorter timelines, staff will explore alternatives to assess applications, assess the critical “appropriate planning threshold” to advance a development proposal and relying on planning tools such as a greater use of such provisions as Holding “H” zones, greater reliance of parent zoning regulations, and greater reliance of the site plan process to implement the intent of the development application.

## **Public Engagement**

Public Engagement has always been a cornerstone of the development review process. The legislative requirement that a municipal Council conduct a public meeting prior to making a recommendation on a development application is still enshrined in the provincial *Planning Act*.

Our municipal partners are also exploring the option of combining the Statutory Public Meeting with the Recommendation Meeting. However, the current Town practice is to hold two meetings before Council in order to engage the public. The Bill 109 timelines significantly reduce the ability to prepare two comprehensive staff reports for the two meetings before Council. Staff acknowledge that public engagement is a cornerstone to the development process and are suggesting a streamlined reporting structure that would allow the Town to continue to hold two meetings before Council thereby allowing the public to be engaged early in the process.

Typically the Statutory meeting before Council introduces the application and garners feedback from the public and is in the form a detailed staff report and presentation. A second detailed report and recommendation is prepared for the second meeting before Council.

However, in order to ensure that the public is properly and fully engaged in the planning process in the context of the Bill 109 timeframes, a public meeting will be scheduled immediately upon receipt of an application. Staff will prepare a streamlined factual report/memo that will introduce the development application to Council and the public and provide the details of the proposal, the nature of the amendment(s) being sought, and an identification of the general issues arising from the application. At the Statutory Public Meeting the applicant will present/introduce the proposal to Council followed by public delegations. The early scheduling of the Public Meeting will introduce the proposal immediately to Town Council and the public, which will allow for the early identification of matters to consider arising from a proposal and will thereby allow more time for Town staff to better evaluate issues.

An additional change to the streamlined development process is to require a Developer hosted Public Information Meeting (PIM) to engage the public early in the process and allow the applicant to address issues in advance of a formal submission, and that such a requirement be strongly encouraged by way of direction in the town's Oakville Plans. Presently, this is only the Town's practice to request an applicant to host a PIM, and as such, the practice has not been prescribed in the Official Plan. The draft implementing Official Plan Amendments are attached hereto as Appendices for Council's consideration.

Appendix A, attached hereto, illustrates the process mapping that has been devised for the review of development applications under the Bill 109 timelines.

### **Site Plan Application Process Changes**

Bill 109 is proposing to introduce a 60-day timeframe in which a Site Plan (SP) application must obtain approval, after which a municipality must start to refund the application fee, based on a graduated scale (Figure 1). Similar to the Development Application review process, staff have had to re-evaluate how a SP Application can be processed within the newly prescribed timeframe respecting the refund of fees.

The Site Plan review process will continue with the initial step being the requirement that a rigorous pre-consultation meeting be held between town staff and an applicant, wherein a site plan proposal is brought forward.

Site Plan applications will also be required to be prepared based on updated Terms of References for the various plans/studies that will be required. The most significant change to the Site Plan Approval process will be at the back end of the process. Assuming that a proposal has been well screened through the initial feedback provided at the pre-consultation process, has been prepared in strict accordance with the updated Terms of References for each study/plan, it is anticipated that conditional Site Plan approval can be granted within 60 days of submission (and thereby satisfying the prescribed timeframe) with any remaining minor outstanding matters/conditions being required to be fulfilled prior to the Director of Planning issuing final site plan approval, after which time the applicant can apply for a Building Permit. Issuing conditional approval within 60 days not only satisfies the Bill 109 requirement, but it will also allow for multiple circulations at the 'back-end' of the process.

Appendix B, attached hereto, illustrates the process mapping that has been devised for the review of Site Plan applications under the Bill 109 timelines.

### **Next Steps**

Town Planning staff will continue to work with its agency partners in refining its internal processes to streamline and seek efficiencies in the review process of Development Applications and Site Plan applications. These include finalizing the updates to all relevant Terms of References, updating Application Forms, pre-consultation request forms and checklist, reports and templates (where necessary), continuing to explore necessary changes to fees, and continuing to streamline our virtual application intake and review processes.



Further, Town staff are also seeking the input from the development community through the Developer Liaison Committee, to better align with the expectations of our development partners.

Staff will monitor the implications of Bill 109 on current staffing levels, and whether the foregoing process changes to Bill 109 allows for the reasonable processing of development applications in the allotted timeframes with current staffing levels, or if staffing levels need to be adjusted accordingly.

The improvements to the town's development review process outlined herein are recommended regardless of future improvements which may be required as a result of Bill 23.

## **CONSIDERATIONS:**

### **(A) PUBLIC**

Given the expedited timeframes in which development applications are required to be processed, modifications to the Planning Department's internal processes are necessary.

Firstly, amendments to both Livable Oakville and the 1984 Official Plans are proposed that will recommend a developer-led Public Information Meeting to be conducted prior to the submission of a development application. As such, the public will benefit from being provided details of a development proposal before an actual application is submitted to the Town. Appendix C contains OPA 329, being the amendment to the 1984 Plan, and Appendix D contains OPA 53, being the amendment to Livable Oakville.

Secondly, the statutory Public Meeting will be scheduled immediately upon submission, so as to garner public input early in the review of the application, as best as possible.

### **(B) FINANCIAL**

Staff are continuing to investigate relevant changes to the town's fee structure affecting development and site plan applications, so as to more appropriately align them with any process mapping changes. One such fee by-law change is to eliminate the 25% discount for combined development applications. This intends to eliminate the submission of "unbundled applications", such as combined OPA/ZBA, or ZBL/Plans of Subdivision.

Other such fee changes include:

- ☐ Introducing a pre-consultation extension fee;
- ☐ Investigating a final site plan approval fee;
- ☐ Investigating an increased pre-consultation fee

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

Should planning fees have to be reimbursed if the timelines cannot be achieved, the budgets of other Town Departments, including Legal, Engineering, Parks, and Finance may be negatively affected.

**(D) CORPORATE STRATEGIC GOALS**

This report addresses the corporate strategic goal(s) to:

- be the most liveable town in Canada.

**(E) CLIMATE CHANGE/ACTION**

This matter reinforces a practice of ensuring the public continues to be well-engaged in the planning process, thereby allow for opportunities for public discourse about all relevant matters, including climate change.

**CONCLUSION:**

Bill 109 could negatively affect the operating budget of the Planning Department and other departments in the Town, as well as the overall tax levy of Town. In response to this pending legislation, planning staff recommend modifications to the development review processes. By adopting a pro-active strategy, applicants of development applications will have the option of having their technical studies pre-reviewed prior to the submission of an actual application, thereby shortening the technical review of the application that would otherwise be required upon the submission of an application. Should an applicant not choose this option, they would run the risk of not having the ability to make multiple changes to an application based on town and agency responses. This may lead to recommending denial of a considerable number of applications.

Concerning site plan applications, the time frame will require a conditional approval being rendered on the application within the prescribed 60 days, with any outstanding matters being required to be fulfilled prior to final site plan approval by the Director of Planning.

**APPENDICES:**

Appendix A – Development Application Process Mapping

Appendix B – Site Plan Process Mapping

Appendix C – Official Plan Amendment 329

Appendix D – Official Plan Amendment 53

Appendix E – Public Comments

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