



## REPORT

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**TO:** Mayor Lawlor and Members of Council

**FROM:** Jeff Markowiak, Director of Development Review

**DATE:** November 25, 2022

**REPORT NO.:** PD-2022-0049

**SUBJECT:** Public Meeting for Town initiated amendments to the Town's Official Plan (OPA 49) to respond to changes to the Planning Act resulting from Bill 109, More Homes for Everyone Act, 2022

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### RECOMMENDATION:

THAT Report No. PD-2022-0049, dated November 25, 2022, regarding a "Public Meeting for Town initiated amendments to the Town's Official Plan (OPA 49) to respond to changes to the Planning Act resulting from Bill 109, More Homes for Everyone Act, 2022", be received;

AND FURTHER THAT all agency and public comments be referred to staff for further reporting regarding the disposition of this matter.

### KEY POINTS:

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

- The Province of Ontario introduced 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 Ontario *Planning Act* that require municipalities to refund all, or a portion of, application fees for Zoning By-law Amendment (ZBA) or Site Plan applications if decisions are not made by the municipality within the identified statutory timeframes. The changes come into effect as of January 1, 2023.
- The Town is proposing an Official Plan Amendment (OPA 49) to modify the text of the Town's Official Plan to implement the changes made as a result of Bill 109 in a manner that will best position the Town to be able to make a decision on ZBA and Site Plan applications within the statutory timeframes.

- Specifically, the proposed Official Plan Amendment (OPA 49) seeks to make the following changes to the Town’s Official Plan:
  - introduce direction for applicants to hold a public consultation meeting prior to submission of any Zoning By-law Amendment application, including those filed in conjunction with an Official Plan Amendment and/or Plan of Subdivision application;
  - identify that Site Plan applications are subject to complete application requirements and confirm that decisions on Site Plan approval are delegated to staff;
  - include Consent as an application type requiring pre-consultation;
  - require submitted studies to be completed in accordance with approved terms of reference, where applicable; and,
  - identify additional studies that can be requested as part of a complete application.
- Staff has also developed a new voluntary Pre-Submission application process to be available to applicants who wish to work with the Town to influence the best outcome for a proposal within a reasonable period of time, outside of the Bill 109 statutory timeframes, rather than focusing on obtaining a fee refund.
- Accompanying amendments to the Town’s Pre-Consultation By-law, Site Plan By-law and Fees & Rates By-law are also being recommended to implement the proposed Official Plan Amendment and Pre-Submission application process.
- The purpose of the Public Meeting is to obtain comments and feedback from the community on the proposed Official Plan Amendment. Any comments received will be thoroughly reviewed, evaluated, and included in the final Recommendation Report to Council at a later date.

**BACKGROUND AND DISCUSSION:**

Bill 109, *More Homes for Everyone Act, 2022*, received Royal Assent by the Province of Ontario on April 14, 2022, and is now law. Schedule 5 of Bill 109 made changes to the *Planning Act* that require municipalities to refund all, or a portion of, application fees for Zoning By-law Amendment or Site Plan applications submitted on, or after, January 1, 2023, if decisions are not made by the municipality within the identified statutory timeframes. The required refund is established on a graduated schedule over time, up to 100% of the original submitted amount. The table below summarizes the statutory graduated refund timelines:

	<b>No Refund</b>	<b>50% Refund</b>	<b>75% Refund</b>	<b>100% Refund</b>
<b>ZBA</b>	Decision made within 90 days	Decision made within 91 to 149 days	Decision made within 150 and 209 days	Decision made 210 days or later
<b>Combined OPA/ZBA*</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</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

\*Only the ZBA fees are subject to a refund for combined OPA/ZBA applications

These changes to the *Planning Act* do not affect any other applications fees such as subdivision, part lot control or condominium, etc. The 'clock' on the timeframe in which a municipality needs to make a decision on an application does not start running until the application has been deemed complete by staff (municipalities have 30 days to deem an application complete/incomplete after submission; that status can be appealed by the applicant to the OLT).

The Town's planning application fee regime has been established to recover approximately 70% of the Town's staffing resource costs to process and review development applications. Over the past 5 years the average annual fee amount collected to process Zoning By-law Amendment and Site Plan applications was approximately \$360,000 (fees are also collected for other application types not affected by Bill 109, such as Official Plan Amendment, Subdivision, Minor Variance, etc.). If any amount of these fees is required to be refunded it will have substantial financial implications to the municipality as any fee shortfall will need to be funded from the Town's property tax base given the development review process is a critical function for the municipality. Therefore, it is imperative that the Town modify and adapt the current application review process in a manner that will best position the municipality to be able to make a decision on ZBA and Site Plan applications within the statutory timeframes.

#### Impacts to Application Review Process as a Result of Bill 109

The current development application review process for Official Plan Amendment, Zoning By-law Amendment and Draft Plan of Subdivision applications is an iterative one between an applicant, Town departments, external agencies and residents (for those application types that allow for public consultation) working collaboratively to evaluate a development proposal to ideally reach consensus on its suitability for the site and neighbourhood<sup>1</sup>.

The *Planning Act* currently allows applicants to appeal applications to the Ontario Land Tribunal (OLT) if a decision is not made by a municipality within a certain timeframe. Although the timelines for receipt of non-decision appeals are relatively tight, our experience to date is that applicants rarely file such appeals as soon as they are permitted to do so. In general terms, the current process allows staff and an applicant the opportunity to engage in a back-and-forth discussion to identify and try to resolve any issues raised through the technical review and public consultation process. In some cases, this will entail the holding of an additional public consultation session or targeted dialogue with specific community groups.

As a result of Bill 109, the need to review development applications and issue decisions within much shorter timeframes to avoid issuing refunds will invariably:

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<sup>1</sup> Site Plan applications are not subject to a public process in accordance with *Planning Act* requirements and have been delegated to staff.

- limit the amount of public engagement that can take place once an application is filed and declared complete;
- entail focusing only on “threshold” or fundamental issues associated with a proposal;
- lead to a greater number of conditions being attached to approvals potentially resulting in a more complex post-approval process; and,
- defer the resolution of issues to later application stages.

The reduced timelines may also result in the potential refusal of applications that did not submit studies or plans that meet applicable standards or could otherwise have reached consensus if additional time was available to resolve outstanding concerns.

It should be noted that the ‘clock’ on the timeframe in which a municipality needs to make a decision does not stop once staff have provided comments back to an applicant and are waiting for them to provide a response or resubmission. This means that Bill 109 has placed the burden and consequences on municipalities for a process that is also very much shaped by applicants who are positioned to receive the refunds.

Therefore, to best position the Town to be able to make a decision on ZBA and Site Plan applications within the statutory timeframes set through Bill 109, staff are recommending amendments be made to the Town’s Official Plan in order to modify current aspects of the application review process that the Town can influence and control.

#### Proposed Official Plan Amendment (OPA 49)

To respond to the statutory timeframes set through Bill 109, staff are proposing an Official Plan Amendment (OPA 49) to modify the text of the Town’s OP to provide language that will help staff implement changes to the Town’s development review process to:

- provide an additional opportunity to consult with the public regarding a development proposal, especially early in the review process;
- put in place requirements to help ensure materials filed by an applicant in support of a ZBA or Site Plan application (ie. drawings, reports and studies) are best positioned to provide the necessary information staff need to properly evaluate a development proposal; and
- prevent the filing of a Site Plan application until any associated Zoning By-law Amendment has received approval.

A draft copy of proposed Official Plan Amendment 49 is attached to this report as SCHEDULE 1. Specifically, the proposed Official Plan Amendment seeks to make the following changes to the Town’s OP:

### ***Public Consultation Prior to ZBA Application Submission:***

- Introduce direction for applicants to hold a public consultation meeting prior to submission of any Zoning By-law Amendment application, including those filed in conjunction with an Official Plan Amendment and/or Plan of Subdivision application.

The current application review process mandates that the Statutory Public meeting held in front of Council is the only public consultation process required for a Zoning By-law Amendment application. Any additional public consultation that may take place typically occurs later in the application review process at the discretion of staff or the applicant.

The Bill 109 statutory timelines in which the Town needs to issue a decision on a ZBA will no longer allow for additional public consultation to occur beyond the Statutory Public Meeting without triggering a refund of application fees. Therefore, staff are proposing amendments to Sections G12.1 and G12.2 of the OP to identify that an applicant may be required to host a public consultation meeting at the pre-consultation stage, prior to filing any Zoning By-law Amendment application, to obtain preliminary feedback from the community.

The new applicant held meeting is meant to be in addition to the Statutory Public Meeting, which will still be required once the formal ZBA application is filed. The intended result would be that two public consultation meetings are held for Zoning Amendment applications before any recommendation report is ever considered by Council. In developing this amendment staff had regard for the Halton Hills Public Engagement Charter.

### ***Site Plan Application Processing:***

- Identify that Site Plan applications are subject to complete application requirements and confirm that decisions on Site Plan approval are delegated to staff.

The *Planning Act* did not previously require that Site Plan applications be deemed complete. However, now that Bill 109 has established statutory review timeframes to trigger application fee refunds, Site Plan applications may be deemed complete in order to start the statutory timeframe 'clock'. Therefore, the amendment seeks to modify Section G12.2 of the OP to include Site Plan as an application type needing to be deemed complete. Section G12.3 is also proposed to be amended to ensure the supplementary information requirements that may be required in support of a complete application also apply to Site Plan.

Bill 109 also amended the *Planning Act* to require that all municipalities delegate the authority to approve Site Plan applications to staff. While the Town had previously delegated approval authority for Site Plan applications to the Commissioner of Planning & Development, Section G8 of the Plan must formally be updated to acknowledge and confirm the existing practice.

### **Complete Application Submission Requirements:**

- Require submitted studies to be completed in accordance with approved terms of reference, where applicable. Also introduce Subwatershed Impact Study/Environmental Implementation Report, Construction Management Plan and zoning amendment or minor variance approvals as new supplementary information requirements that may be requested as part of a complete application.

The new statutory timelines will no longer allow for multiple application submissions and reviews without triggering a refund of application fees. Therefore, to try and help guide the quality of submission materials prepared by an applicant as part of a complete application, the amendment proposes modifications to the text of Section G12.3 of the OP to require that all reports and studies are completed in accordance with pre-approved terms of reference, where applicable. This is intended to ensure that the applicant's initial submission materials meet applicable standards in order to influence the best outcome for an application.

The amendment also proposes to modify Section G12.3 of the Plan to introduce the following additional items as Supplementary Information Requirements that may be required to be submitted in support of a development application:

- *Subwatershed Impact Study/Environmental Implementation Report:* Assesses the potential impact of proposed land use changes or development on adjacent watershed features and evaluates various management strategies to mitigate any potential impact.
- *Construction Management Plan:* The intent of such a plan is to identify and document how on-site works associated with different phases of a development project, including demolition, site alteration and completion of construction, will occur in an efficient manner that minimizes and/or mitigates disruptions or impacts to municipal infrastructure, rights-of-way and neighbouring properties.
- *Zoning By-law Amendment or Minor Variance approval:* All zoning amendment or minor variance approvals identified as being required through a pre-consultation process to facilitate a proposed development shall be approved by Council or the Committee of Adjustment for the Town of Halton Hills prior to submission and acceptance of a Site Plan application. This is required as it would not be possible to grant Site Plan approval within the statutory 60-day timeframe while an associated Zoning By-law Amendment or minor variance application is still under review.

### **Consent Applications Subject to Pre-Consultation:**

- Include Consent (severance) as an application type requiring pre-consultation to align with the existing complete application requirements that apply to Consents.

The Town's Official Plan already identifies that Consent (land severance) applications are subject to complete application requirements. Complete application requirements are traditionally identified through the pre-consultation process and as a practice the Town has already been subjecting Consent proposals to pre-consultation. Therefore, staff is proposing to amend Section G12.1 of the Plan to formally identify that Consent applications are subject to pre-consultation.

### Voluntary Pre-Submission Application

In addition to OPA 49, staff are also planning on implementing a new voluntary Pre-Submission application process to respond to Bill 109.

The new Pre-Submission application would be available to applicants who recognize the complexities that Bill 109 creates for the development review process and would therefore prefer to work with the Town to obtain a decision on their application within a reasonable timeframe rather than prioritize securing a refund and/or potentially face refusal of an application that could otherwise have reached consensus if not subject to the Bill 109 statutory timeframes.

Interested applicants would file the Pre-Submission application in advance of their formal Zoning By-law Amendment or Site Plan application. The Pre-Submission application would include all of the drawings, reports and studies identified as being required during the pre-consultation stage. Town and agency staff would review the materials and provide comment back to the applicant to help guide the future *Planning Act* application and submission materials. Given the review of the Pre-Submission application occurs prior to filing of any formal application, the review period would not be governed by the statutory timeframes set through Bill 109. The Town will collect a fee for the review of the Pre-Submission application; however, that fee will be credited towards the future application fee required for the formal application. The establishment of the Pre-Submission application process would allow for at least one additional review cycle to occur without the municipality facing the threat of a fee refund. No amendment to the Town's Official Plan is required to implement the Pre-Submission application process.

Conversations with municipal counterparts across the region suggests that there are a number of applicants who regularly develop within Halton Region who would be interested in proceeding through a Pre-Submission application process if it will help influence the best outcome for a development proposal within a reasonable timeframe.

### Other Updates

To help implement the proposed Official Plan Amendment (OPA 49) and Pre-Submission application process staff are also recommending amendments to the following:

- *Pre-Consultation By-law*: include direction for applicants to hold a public consultation meeting prior to submission of a Zoning By-law Amendment application, where appropriate; see SCHEDULE 2.

- *Site Plan By-law*: delete the section that indicates the Commissioner of Planning & Development may refer a disputed Site Plan application to Council for consideration; see SCHEDULE 3.
- *Fees & Rates By-law*: to introduce 1) new fees for the Pre-Submission application types being created; 2) a new Secondary ZBA fee (for applicants willing to unbundle applications to address Bill 109 complexities); and, 3) a new class of Holding Removal application (in anticipation of more complex H removals due to Bill 109); see Report CORPSERV-2022-0032, also being considered by Council on December 12, 2022.

### **STRATEGIC PLAN ALIGNMENT:**

This report aligns to the Town's Strategic plan recognizing the value to provide responsive, effective municipal government and strong leadership in the effective and efficient delivery of municipal services.

This report also identifies shaping growth as one of the Town's Strategic priorities.

### **RELATIONSHIP TO CLIMATE CHANGE:**

This report is administrative in nature and does not directly impact or address climate change and the Town's Net Zero target.

### **PUBLIC ENGAGEMENT:**

Public Engagement has been conducted as follows:

November 17, 2022: Notice of Public Meeting published in Independent & Free Press

December 8, 2022: Courtesy Notice published in the Independent & Free Press

No comments have been received from the public as of the date this report was prepared.

The purpose of the Public Meeting is to obtain comments and feedback from the community. Any comments received from the public will be reviewed, evaluated, and included in the final Recommendation Report to Council.

### **INTERNAL CONSULTATION:**

Staff consulted with the various Town departments, Town Solicitor, Region of Halton, Conservation Halton, Credit Valley Conservation and other local Halton municipalities in the preparation of this report. Notice of the Statutory Public Meeting was also provided to the required agencies in accordance with the Planning Act.



**FINANCIAL IMPLICATIONS:**

As referenced earlier in this report, refunding planning application fees would have a financial impact to the Town. The refunds would otherwise have to be funded through the property tax base. Specific process changes have been set out in this report to mitigate those potential impacts.

Reviewed and approved by,

John Linhardt, Commissioner of Planning & Development

Chris Mills, Chief Administrative Officer