



REPORT

TO: Mayor Lawlor and Members of Council

FROM: Jeff Markowiak, Director of Development Review

DATE: January 10, 2023

REPORT NO.: PD-2023-0006

SUBJECT: Recommendation Report 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

RECOMMENDATION:

THAT Report No. PD-2023-0006, dated January 10, 2023, regarding a "Recommendation Report 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 Town of Halton Hills Official Plan Amendment No. 49, which amends the Town of Halton Hills Official Plan as generally shown on SCHEDULE 1 – OFFICIAL PLAN AMENDMENT 49, be adopted as an exempt local Official Plan Amendment;

AND FURTHER THAT the by-law requiring development applicants to undergo a pre-consultation process with the Town, as generally shown on SCHEDULE 2 – PRE-CONSULTATION BY-LAW, be enacted;

AND FURTHER THAT the necessary By-law be enacted to amend Site Plan Control By-law 2013-0070, as generally shown on SCHEDULE 3 – SITE PLAN CONTROL BY-LAW AMENDMENT;

AND FURTHER THAT Council direct staff to establish a new Pre-Submission Application type, which would be available to prospective applicants who wish to voluntarily work with the Town outside of the formal Planning Act application review timeframes established through Bill 109 to try and influence the best outcome for a development proposal.

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 came into effect as of January 1, 2023; however, the province has advised that the effective date will be delayed to July 1, 2023, once the necessary legislation is passed.
- 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;
 - require submitted studies to be completed in accordance with approved terms of reference, where applicable, and that the qualified professional consultants who prepared such studies apply their signature or seal;
 - identify additional studies that can be requested as part of a complete application;
 - identify that Site Plan applications are subject to complete application requirements and confirm that decisions on Site Plan approval are delegated to staff; and,
 - include Consent as an application type requiring pre-consultation.
- Accompanying amendments to the Town's Pre-Consultation By-law and Site Plan By-law are also being recommended to respond to Bill 109 and implement the proposed Official Plan Amendment.
- Staff is also proposing the adoption of 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.
- This report is recommending approval of the Town-initiated Official Plan Amendment (OPA 49), accompanying implementation by-law amendments and that Council direct staff to establish the new Pre-Submission application process.

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 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:

	No Refund	50% Refund	75% Refund	100% Refund
ZBA	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
Combined OPA/ZBA*	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
Site Plan	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*

The fee refund requirements were intended to apply to all new applications submitted on, or after January 1, 2023; however, the Minister of Municipal Affairs and Housing recently advised that the province intends to bring forward legislation shortly that will delay the effective date to July 1, 2023. 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.

To respond to the statutory timeframes set through Bill 109, staff are proposing the following measures to implement changes to the Town's development review process:

1. An Official Plan Amendment (OPA 49) to modify the text of the Town's OP to provide language that will help staff implement the proposed process changes;
2. Updates/amendments to the Town's Pre-Consultation By-law and Site Plan By-law to respond to Bill 109 and implement the proposed Official Plan Amendment (OPA 49); and,
3. Adoption of 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 outside of the Bill 109 statutory timeframes.

Further information regarding each proposed measure is set out below.

1. Official Plan Amendment (OPA 49)

OPA 49 proposes 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 development application (ie. drawings, reports and studies) are best positioned to provide the necessary information staff need to properly evaluate a proposal; and
- prevent the filing of a Site Plan application until any associated Zoning By-law Amendment has received approval.

Other administrative amendments related to Site Plan approval and Consent applications are also proposed. A copy of OPA 49 is attached to this report as SCHEDULE 1. Specifically, the Official Plan Amendment would 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 Official Plan Amendment and/or Plan of Subdivision applications.

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.

Staff acknowledges that the *Planning Act* does not provide authority for a municipal Official Plan to mandate an applicant hold a public consultation meeting prior to the formal filing of an application. Therefore, the intent of this policy is to set out the expectation and provide staff with the necessary direction to strongly encourage the holding of such a meeting at the pre-consultation stage.

In developing this amendment staff had regard for the Halton Hills Public Engagement Charter.

Complete Application Submission Requirements:

- Require submitted studies to be completed in accordance with approved terms of reference, where applicable.
- Require the qualified professional consultants that prepared submitted studies apply their signature or seal to any such study, where applicable.
- 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, and that the qualified professional consultant who prepared the report or study affixes their signature or seal. 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.

Site Plan Application Processing:

- Identify that Site Plan applications are subject to complete application requirements.
- 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 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.

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.

2. Implementing By-law Updates/Amendments

To respond to Bill 109 and help implement Official Plan Amendment (OPA 49) staff are also recommending the following measures:

Pre-Consultation By-law:

Council adopt a new pre-consultation by-law that will 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:

Council amend the current Site Plan By-law to delete the section that indicates the Commissioner of Planning & Development may refer a disputed Site Plan application to Council for consideration; see SCHEDULE 3.

3. Voluntary Pre-Submission Application

This report is also recommending that Council direct staff to establish a new voluntary Pre-Submission application process to respond to Bill 109. The new Pre-Submission application will 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 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 or adoption/update of a by-law is required to implement the Pre-Submission application process.

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. On December 12, 2022, Council approved the Town's 2023 Rates and Fees (Report CORPSERV-2022-0032), which introduced the new fees for the Pre-Submission application types recommended to be established.

A process map showing how the OPA 49 amendments and the voluntary Pre-Submission application would modify the Town's current development review process is attached to this report as SCHEDULE 4.

Public Comments

The proposed Official Plan Amendment and other modifications to the Town's development review process were presented to the public by way of Report No. PD-2022-0049 through a Statutory Public Meeting on December 12, 2022. At the public meeting one member of the public spoke in support of the proposed changes and one resident had questions about how the changes would apply in practice for minor zoning amendments.

Prior to the meeting the Town also received a letter from the Building Industry and Land Development Association (BILD) citing concerns with the proposed OPA and process amendments and requested that Council defer approval of any changes to the Town's review process to allow staff to reconsider certain components; see BILD's letter attached as SCHEDULE 5. Specifically, BILD cited the following:

- parsing out segments of the development review process to occur before submission of a formal application to avoid the 'clock' starting on the legislative timelines is not in keeping with the spirit and intent of the Bill 109 legislation. They suggest as a matter of law, policies or procedures that aim to circumvent or delay the timelines, including through a Pre-Application process, should be avoided;
- BILD agrees that public engagement is critical to the development review process, but any extra-statutory pre-application consultation must remain voluntary, as a municipality cannot prevent the lawful submission of an application under the *Planning Act* if pre-application consultation does not occur; and,
- BILD suggested alternative practices the Town could consider to address the implications of Bill 109, including pre-qualifying consultants so that only a cursory review of submitted materials would be required.

Staff Response:

The proposed Pre-Application is an entirely voluntary process and would only be used by applicants who themselves see it as a benefit to the review of their development proposal. Conversations with our municipal counterparts 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 were available. Establishing the Pre-Submission application does not require an amendment to the Town's Official Plan or approval of any procedural by-law.

As mentioned earlier in the report, staff acknowledges that the *Planning Act* does not provide authority for the Town to mandate an applicant hold a public consultation meeting prior to the formal filing of an application. Therefore, OPA 49 has been drafted in a manner that sets out the expectation for the applicant to hold such a meeting as a best practice and to provide staff with the necessary direction to strongly encourage it at the pre-consultation stage. This approach is consistent with language already contained in the Town's OP under Section G2.4, which identifies that "proponents shall

be encouraged to pre-consult with neighbouring landowners to obtain their views before a formal application is submitted”.

Staff does not share BILD’s opinion in regard to pre-qualifying consultants as an appropriate method to try and reduce the number of submissions and reviews. From a municipal perspective, the intent of the development review process is to ensure that the Town’s decisions appropriately balance the overall public interest against the private interest expressed in the application. Staff does not believe that deferring to the conclusions of an applicant’s consultants and limiting staff’s role to a cursory review will appropriately demonstrate and ensure that the public/private interests are being balanced. Additional concerns regarding BILD’s suggested pre-qualification approach include:

- while certain firms may have a better understanding of the Town’s policies and regulations, the qualifications and knowledge of the individual professionals at that firm may vary;
- in most cases, measures proposed by a consultant to support components of a development are not simply subject to a pass/fail evaluation, which would be more conducive to pre-qualifying a consultant; and,
- often times design solutions are reliant upon, or interconnected to, other aspects of the development. If one component is required to be changed by staff it has implications on other components of the proposal, which inevitably still triggers the need for more than one submission and review.

While staff does not agree that BILD’s notion of pre-qualifying consultants is a panacea, we do agree with the general sentiment of trying to reduce the number of submissions/reviews. In this regard, OPA 49 does propose amendments to require all submitted reports and studies to be completed in accordance with pre-approved terms of reference and that the qualified professionals who prepared the materials apply their signature/seal. If the materials are fully supported by the qualified professional and prepared in-line with Town expectations, this should hopefully help achieve a similar outcome of reducing submissions and shortening review timeframes. Ultimately staff need to be satisfied with the submissions as the Town may be accepting future liability associated with the work.

The voluntary pre-application process has also been designed to streamline the process once the formal application has been filed.

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: a statutory Public Meeting was held on December 12, 2022. This meeting fulfilled the requirements for public participation under the Planning Act, and provided for Transparency, Notification and Participation, as defined in the Town's Public Engagement Charter.

Notice of the Statutory Public Meeting was published in the Independent & Free Press and provided to the required agencies, in accordance with the Planning Act. Notification was also provided to the Halton Hills development community.

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.

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