

To: Economic and Development Services Committee

From: Warren Munro, HBA, MCIP, RPP, Commissioner,
Economic and Development Services Department

Report Number: ED-23-122

Date of Report: May 31, 2023

Date of Meeting: June 5, 2023

Subject: Proposed Revisions to Planning Application Pre-Consultation
Process and Associated Fees, and Status of Appeal of
Amendment 212 to the Oshawa Official Plan

Ward: All Wards

File: 12-03-3524

1.0 Purpose

The purpose of this Report is to:

- Update Council on an appeal filed by the Building Industry and Land Development Association (“B.I.L.D.”) of the City’s adoption of Amendment 212 to the City of Oshawa Official Plan (“O.P.A. 212”) which implemented new policies for complete applications and pre-consultation and updated policies for the use of holding symbols;
- Recommend Council approve amendments to the City’s Pre-consultation By-law 22-2023 to implement a revised process for managing pre-consultations for potential applications to amend the Oshawa Official Plan (O.O.P.) and Zoning By-law 60-94, applications for approval of draft plans of subdivision and condominium, and applications for site plan approval; and,
- Recommend Council approve amendments to the City’s General Fees and Charges By-law 13-2003, as amended, related to the recommended updated pre-consultation process.

The above actions are being recommended in response to certain amendments made by the Province to the Planning Act, R.S.O. 1990, c.P.13 (the “Planning Act”) in recent months, including amendments resulting from:

- Bill 109, More Homes for Everyone Act, 2022, S.O. 2022, c. 12 (“Bill 109”),
- Bill 23, More Homes Built Faster Act, 2022 (“Bill 23”), and,
- Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023 (“Bill 97”).

A copy of Bill 109 which received Royal Assent on April 14, 2022 can be found at the following link: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-04/b109ra_e.pdf.

A copy of Bill 23 which received Royal Assent on November 28, 2022 can be found at the following link: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf.

A copy of Bill 97 which has not received Royal Assent as of the date of this Report can be found at the following link: <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-97>.

This Report includes a recommendation that Council waive the notice requirements of the City's Notice to the Public By-law 147-2007. Owing to the timing of this Report, B.I.L.D.'s appeal of O.P.A. 212 and the need to update the City's pre-consultation process in anticipation of changes to the Planning Act that come into effect on July 1, 2023, the matters addressed in this Report are of a time sensitive nature.

Attachment 1 is a copy O.P.A. 212 adopted by Council on February 27, 2023 and subsequently appealed by B.I.L.D.

Attachment 2 is a copy of the appeal letter dated March 29, 2023 submitted by Cassels Brock & Blackwell L.L.P. ("Cassels") on behalf of B.I.L.D.

Attachment 3 is a confidential memo from the Commissioner of Economic and Development Services Department providing an update on the appeal of O.P.A. 212.

Attachment 4 is a copy of Pre-consultation By-law 22-2023 showing recommended amendments.

Attachment 5 is a copy of a portion of Schedule "D" to General Fees and Charges By-law 13-2003, as amended, showing a recommended amendment to the pre-consultation fees for various types of planning applications.

2.0 Recommendation

That the Economic and Development Services Committee recommend to City Council:

1. That, pursuant to Report ED-23-122 dated May 31, 2023, the amendments to Pre-consultation By-law 22-2023 be approved and the amending by-law be passed generally in accordance with Section 5.3 and Attachment 4 to said Report.
2. That, pursuant to Report ED-23-122 dated May 31, 2023, the amendments to General Fees and Charges By-law 13-2003, as amended, be approved and the amending by-law be passed generally in accordance with Section 5.4 and Attachment 5 to said Report and that the requirement for public notice (including newspaper advertisements) in Notice to the Public By-law 147-2007, as amended, be waived due to timing limitations and the urgent nature of the matter.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

The following were consulted in the preparation of this Report:

- Commissioner, Corporate and Finance Services
- City Solicitor
- Region of Durham
- Central Lake Ontario Conservation Authority

Staff have also consulted with B.I.L.D. on the recommendations contained in this Report.

5.0 Analysis

5.1 Background

Bill 109 resulted in several amendments to the Planning Act. The stated purpose of Bill 109 by the Province is to have homes built faster by expediting approvals and providing increased certainty of development costs to developers.

One of the changes has the effect of requiring municipalities to partially or fully refund application fees to applicants if the municipality does not make a decision on their Zoning By-law Amendment (“Z.B.A.”) application within 90 days of the submission of the complete application or 120 days if submitted concurrently with an Official Plan Amendment (“O.P.A.”) application. Bill 109 stipulated that a refund would be required to be provided on a graduated basis for applications made on or after January 1, 2023. The fee refund structure is as follows:

Table 1: Refund Structure for Zoning By-law Amendment Applications

Time Period for Decision (Days) – Standalone Z.B.A.	Time Period (Days) – Combined O.P.A. and Z.B.A.	Fee Refund (%)
90 or less	120 or less	0
91 to 149	121 to 179	50
150 to 209	180 to 239	75
210 or more	240 or more	100

An applicant also has the right to appeal to the Ontario Land Tribunal (“O.L.T.”) if the municipality fails to make a decision on a complete Z.B.A. application within 90 days of the submission of the complete application or within 120 days if it is combined with an O.P.A. These timelines are consistent with the current requirements of the Planning Act.

Similarly, another change has the effect of legislatively requiring municipalities to partially or fully refund application fees to applicants if the municipality does not approve plans

and drawings submitted with a site plan application within 60 days of the submission of the application and on a graduated basis thereafter for applications made on or after January 1, 2023. The fee refund structure is as follows:

Table 2: Refund Structure for Site Plan Approval Applications

Time Period for Approval (Days)	Fee Refund (%)
60 or less	0
61 to 89	50
90 to 119	75
120 or more	100

An applicant also has the right to appeal to the O.L.T. if the municipality fails to approve the plans and drawings submitted with a site plan application within 60 days of the submission of the application. There is no mechanism for a municipality to formally deny a site plan application. While a municipality may not approve an application, an applicant could appeal the unapproved application to the O.L.T. 60 days after the submission of the application and demand a refund in accordance with Table 2 above.

The refund rules created by Bill 109 require municipalities to refund the application fee if triggered by the above criteria whether the applicant wants a refund or not.

Under Bill 109, applications submitted before January 1, 2023 would not be affected by the changes to the Planning Act by Bill 109 related to refunds.

The graduated refund rules introduced under Bill 109 do not take into account that delays may occur that are outside of the control of municipalities, and are, therefore, punitive towards municipalities. The legislation does not include a mechanism to “stop the clock” while the municipality waits for the applicant to address matters, unless the municipality can deem an application incomplete when it is originally submitted due to the omission of information or material the municipality requires to consider the application and which are outlined in the municipality’s official plan.

Report ED-22-216 dated November 23, 2022 made several recommendations in an attempt to deal with the implications of Bill 109. On December 12, 2022, Council passed the following motion:

- “1. That, pursuant to Report ED-22-216 dated November 23, 2022, the Economic and Development Services Department be authorized to initiate the statutory public process under the Planning Act for Council to consider proposed City-initiated amendments to the Oshawa Official Plan, and to consider a Mandatory Consultation By-law, generally in accordance with Section 5.2 and Attachment 1 to said Report.
2. That, pursuant to Report ED-22-216 dated November 23, 2022, the amendments to the General Fees and Charges By-law 13-2003, as amended, be approved and the amending by-law be passed generally in accordance

with Attachment 2 to said Report and that the requirement for public notice (including newspaper advertisements) in Notice to the Public By-law 147-2007, as amended, be waived due to timing limitations and the urgent nature of the matter.

3. That, pursuant to Report ED-22-216 dated November 23, 2022, the amendments to Site Plan Control By-law 137-89, as amended, be approved and the appropriate amending by-law be passed generally in accordance with Attachment 3 to said Report.
4. That, pursuant to Report ED-22-216 dated November 23, 2022, the amendments to Delegation of Authority By-law 29-2009, as amended, be approved and the appropriate amending by-law be passed generally in accordance with Attachment 4 to said Report.
5. That, pursuant to Report ED-22-216 dated November 23, 2022, the proposed policy for issuing notice of complete applications for zoning by-law amendments, official plan amendments, draft plans of subdivision and draft plans of condominium be approved generally in accordance with Attachment 6 to said Report.”

Report ED-22-216 can be found at the following link: <https://pub-oshawa.escribemeetings.com/filestream.ashx?DocumentId=10204>.

On December 22, 2022, Minister of Municipal Affairs and Housing Steve Clark issued a letter to all heads of municipal councils. In the letter the Minister committed to bringing forward legislation in 2023 that would delay the effective date of the fee refund rules established through Bill 109 from January 1, 2023 to July 1, 2023. The letter also stated that in the event that any fee refunds become due to applicants before the legislative changes are made, “municipalities might consider not issuing refunds in the interim” given the Minister’s “express commitment” to introduce legislation that, if passed, would retroactively cancel the requirement.

As a result of the Minister’s letter, some Ontario municipalities have delayed the implementation of updated complete application policies and pre-consultation policies with the aim of having them implemented by July 1, 2023.

To date, the City of Oshawa has not issued any refunds to applicants. Any zoning by-law amendment or site plan approval applications that are submitted prior to July 1, 2023 will not be eligible for a refund regardless of the time it takes for a decision to be made by the City.

On February 6, 2023, the Economic and Development Services Committee held a Planning Act public meeting to consider proposed amendments to the O.O.P. and the adoption of a new Pre-consultation By-law pursuant to Report ED-23-22 dated February 1, 2023. The proposed amendments to the O.O.P. would create new policies outlining plans, reports, materials and information that are required for an application to be considered a “complete application”. The proposed O.O.P. amendments also introduced

new pre-consultation policies as well as updates to existing policies related to holding symbol conditions.

The proposed amendments to the O.O.P. and the new pre-consultation by-law are intended to facilitate the City's ability to respond to planning applications in an appropriate and timely manner.

Report ED-23-22 can be found at the following link: <https://pub-oshawa.escribemeetings.com/filestream.ashx?DocumentId=10971>.

On February 27, 2023, City Council adopted O.P.A. 212 and passed Pre-consultation By-law 22-2023 pursuant to Report ED-23-22.

B.I.L.D. has appealed the City's adoption of O.P.A. 212 to the O.L.T. Consequently, the amendment to the O.O.P. is not yet in effect.

The Planning Act does not provide the ability for an appeal to be filed with respect to a pre-consultation by-law. However, a pre-consultation by-law must operate within the legal authority for the by-law outlined in the Planning Act. Pre-consultation By-law 22-2023 took effect on February 27, 2023.

On April 6, 2023, the Ontario government posted proposed Bill 97 on the Environmental Registry of Ontario. It has not received Royal Assent as of the date of this Report. Bill 97 would further amend the Planning Act to delay the effective date of the fee refund rules introduced under Bill 109 to July 1, 2023. The Planning Act also now stipulates that any refunds that were due prior to July 1, 2023 are canceled.

Bill 97 also establishes regulation-making authority allowing the Minister of Municipal Affairs and Housing to exempt municipalities from the fee refund provisions in the future, if needed. No exemptions are being proposed by the Province at this time, and further information about this potential exemption (e.g. criteria) have not been made available.

A summary of the changes resulting from Bill 97 was outlined in Report ED-23-112 dated May 3, 2023. Report ED-23-112 was presented to Council on May 29, 2023 and can be found at the following link: <https://pub-oshawa.escribemeetings.com/filestream.ashx?DocumentId=12262>.

As highlighted in Report ED-22-216, effective January 1, 2023 City staff have adopted the practice of granting conditional site plan approval within 60 days of the submission of an application for site plan approval. Conditions may include the conveyance of required road widenings, preparation and implementation of a noise study, preparation of landscape plans, provision of a financial security to ensure certain landscaping and other site improvements are implemented, a requirement for the landowner to enter into a site plan agreement with the City for implementation of approved plans, and conformity with Zoning By-law 60-94, as amended which may require the approval of an application to the Committee of Adjustment.

5.2 Appeal of O.P.A. 212 by B.I.L.D.

On February 27, 2023 City Council adopted O.P.A. 212. The purpose of O.P.A. 212 was to:

- Expand the list of holding symbol conditions that the City could impose on the zoning of a parcel of land. A holding symbol is used in situations where the specific future use of land is known or approved, but development of the use is premature until certain requirements have been met. As noted in Report ED-22-216, the implementation of robust holding symbols enables the City to approve appropriate applications more quickly, with certain conditions being fulfilled following approval (e.g. noise study, archaeological assessment, etc.);
- Create a new Pre-consultation section in the O.O.P. that outlines the purpose of and framework for mandatory pre-consultation for applications for amendments to the O.O.P. and Zoning By-law 60-94, applications for draft plan of subdivision and condominium, and applications for site plan approval; and,
- Create a new Complete Applications section in the O.O.P. that outlines the plans, studies, materials and information that the City may determine it requires as part of a complete application.

The goals the City sought to achieve by amending the O.O.P. through O.P.A. 212 were as follows:

- Provide clarity from the onset of the planning approvals process regarding the nature of the information and material the City considers necessary to properly consider applications;
- Reduce the review timelines once formal planning applications are submitted; and,
- Improve the quality of planning applications being submitted.

On March 28, 2023, Cassels filed an appeal of the adoption of O.P.A. 212 on behalf of B.I.L.D. A copy of the appeal letter dated March 27, 2022 from Cassels outlining the basis for the appeal is attached to this Report as Attachment 2.

It is staff's understanding that B.I.L.D. has also appealed similar official plan amendments adopted by other municipal Councils, including those of Ajax, Markham, Brampton, Burlington and Oakville.

Confidential Attachment 3 is a memo outlining the current status of B.I.L.D.'s appeal of O.P.A. 212.

5.3 Pre-consultation By-law 22-2023

Pre-consultation is a process where a development proponent can submit preliminary plans for a potential redevelopment to the City for review and discussion and identification of City standards, by-laws and policies applicable to the site or development, and

identification of plans and reports required to be submitted with the potential future planning application by the development proponent.

The Planning Act states that municipalities may, by by-law, require applicants to consult with the municipality before submitting an application for site plan approval, approval of a proposed draft plan of subdivision or a proposed draft plan of condominium, a Z.B.A. and/or an O.P.A. (i.e. mandatory consultation).

Bill 109 requires refunds of planning application fees for non-decisions on Z.B.A. applications and for not approving applications for site plan approval within strict timelines. Accordingly, mandating that pre-consultation take place and requiring more discussion prior to the formal submission of an application is prudent, reasonable and reduces the review timelines once the formal application is submitted. Enhancements to the pre-consultation process can also potentially improve the quality of the formal applications being submitted to the City.

On December 12, 2022, Council adopted an amendment to General Fees and Charges By-law 13-2003, as amended, to implement a new pre-consultation fee in preparation of the then forthcoming pre-consultation process. On February 27, 2023, pursuant to considering Report ED-23-22, City Council adopted Pre-consultation By-law 22-2023. A copy of this by-law in its current form can be found at the following link:
<https://www.oshawa.ca/en/business-development/resources/Documents/By-law-22-2023-Pre-Consultation.pdf>.

The following describes the City's current mandatory multi-stage pre-consultation process effective February 27, 2023:

Stage 1:

- Stage 1 of the pre-consultation involves circulating the preliminary submission to branches, departments and external agencies for comments and identification of submission requirements for a future planning application(s), with a meeting for discussion if necessary.
- Stage 1 currently includes a fee of \$1,750.

Stage 2:

- Subsequent to the provision of comments as part of Stage 1, the proponent is required to submit a revised preliminary plan and a request for meeting with City and agency staff.
- This Stage 2 meeting provides the proponent an opportunity to demonstrate to City staff and external agencies how the preliminary plan has or has not changed as a result of Stage 1 comments and discussion.
- Stage 2 is also an opportunity to further discuss and clarify Stage 1 comments and requirements.

- Stage 2 currently includes a fee of \$500. The Stage 2 fee is only required to be paid in the event the proponent moves to Stage 2. If the proponent abandons their project after Stage 1, they will not have paid for Stage 2. The Stage 2 fee is credited towards an applicant's planning application if it is submitted within 1 year of the Stage 2 pre-consultation.

Stage 3:

- Stage 3 requires the applicant to submit a checklist outlining the plans and reports the City identified as required to support the application, and the plans and reports the proponent intends to submit with the application.
- Stage 3 provides a last opportunity for the proponent to confirm the plans and reports they are submitting will be sufficient to constitute a "complete application" to the extent determined through the pre-consultation process, and provides City staff an opportunity to verify submission requirements identified during the pre-consultation process and application fees with the proponent.

Since the passing of Pre-consultation By-law 22-2023, staff have had success in mandating that potential applicants communicate with City staff before they finalize their materials for their formal application submission. These discussions have resulted in design changes and refreshed complete application requirements for pre-consultations that took place even before the pre-consultation by-law took effect.

The City's pre-consultation by-law currently does not include an in-depth technical review of any plans, reports, materials or information. It is the expectation of staff that some reports may need a detailed technical review through a third-party peer review at the cost of the applicant, such as land use compatibility studies or retail market impact studies. Where such peer reviews are required, they would take place at the pre-consultation stage prior to the submission of the formal application.

Since Bill 109 took effect in April 2022, municipalities across Ontario have undertaken analyses regarding how to manage zoning by-law amendment applications and site plan approval applications without having to issue refunds. Similar to Oshawa, many municipalities have enhanced their pre-consultation process to improve communication between applicants and the municipality prior to the submission of the formal applications.

Some municipalities have adopted or are considering adopting pre-consultation by-laws and practices that shift to the pre-consultation stage components of the technical review process that traditionally would take place only once the application is formally submitted. Undertaking the initial technical review of the plans, reports, material and information required for an application during the pre-consultation stage allows the municipality the ability and breathing room to review the proposal without triggering a potential refund.

From the applicant's perspective, requesting the municipality to undertake the additional technical review as part of the pre-consultation process is advantageous in a number of ways. Not the least of these is the fact that it avoids potentially running afoul of circumstances that could result in a municipality choosing to deny an application on the basis of insufficient technical information, and thereby avoids having to issue a refund. It is

not unreasonable to assume that under such circumstances the applicant would appeal Council's denial decision to the O.L.T., likely resulting in an extended rather than reduced timeline to bring the application process to a final conclusion.

Staff have reviewed the pre-consultation review practices established by a variety of Greater Golden Horseshoe municipalities. The following list summarizes practices either in effect or currently under consideration in those municipalities related to the technical review of materials at the pre-consultation stage:

- Some municipalities have adopted pre-consultation practices similar to Oshawa's which do not include an optional or mandatory technical review of materials. Rather, they require a review and discussion of preliminary plans and information;
- Some municipalities have adopted a process whereby applicants can opt to submit their full set of plans, reports, materials and information for detailed technical review in advance of a formal planning application as part of their Stage 2 pre-consultation. In some cases, there is a fee associated with the technical review. In the case of the Town of Halton Hills, a non-refundable fee of 50% of the formal application fee is imposed. The remaining 50% is payable once the application is formally submitted; and,
- Some municipalities have adopted a process whereby applicants are required to submit their full set of plans, reports, materials and information for detailed technical review in advance of a formal planning application as part of their Stage 2. In some cases, there is a fee associated with the technical review. In the Town of Milton, a non-refundable fee of 30% of the formal application fee is imposed. The remaining 70% is payable once the application is formally submitted. Similarly, the City of Pickering staff are considering recommending a non-refundable fee of 50% of the formal application fee at the Stage 2 pre-consultation phase. The remaining 50% would be payable once the application is formally submitted.

Among the challenges associated with Bill 109 is the requirement it imposes on municipalities to make decisions on zoning by-law amendment applications in a time frame (90 days) that may not allow for a public meeting to be held according to the regular schedule of Economic and Development Services Committee meetings with presentation of a subsequent recommendation report to Committee and Council during their following regularly-scheduled meetings.

Shifting the technical review of a development proposal such as a zoning by-law amendment to the pre-consultation stage allows staff to be in a position to make a recommendation for approval or denial on the technical merits of the application once the application is formally submitted. However, any such recommendation would still have to be brought forward at the statutory Planning Act public meeting held by the Economic and Development Services Committee.

For example, a zoning by-law amendment application formally submitted to the City on July 24, 2023 would require a decision of Council to approve or not approve the application within 90 days, i.e. by October 22, 2023. Failing to do so would trigger an obligation on the part of the City to refund 50% of the application fee back to the Applicant. Normally the

earliest a Planning Act public meeting could be held with the Economic and Development Services Committee would be on September 11, 2023. To avoid having to issue a partial refund, the Committee would have to make a recommendation to Council at the public meeting itself to approve or deny the application at Council's October 2, 2023 meeting. Normally staff are directed to further process the application for subsequent consideration by Committee and Council.

Under the scenario outlined above, having a technical review of the proposal during Stage 2 of the pre-consultation process would be of benefit as staff would be able to advance a recommendation at the Planning Act public meeting to approve or deny the application based on its technical merits, or lack thereof.

Many municipalities have adopted or are considering adopting practices related to public engagement as part of pre-consultation. The following list summarizes these practices:

- Some municipalities have not expressed any expectation with respect to public engagement as part of pre-consultation in advance of submission of the formal planning application;
- Some municipalities have adopted policies “encouraging” or “strongly encouraging” applicants to undertake public engagement prior to the submission of the formal planning application. Such public engagement could take the form of an open house, public meeting or public information centre (P.I.C.) where the applicant and their consultant team present their proposal to the public. These engagements would be advertised, managed and hosted by the applicant’s team, and municipal staff and Councillors could attend to observe the event. Municipal staff can also support the engagement by assisting as necessary (e.g. supply of mailing labels for landowners within a certain radius of the subject site); and,
- Some municipalities have adopted policies requiring applicants to undertake public engagement prior to the submission of the formal planning application. The nature of the engagement would be similar to what is outlined in the bullet above.

Early public engagement is particularly beneficial for proposals that will ultimately be before the Economic and Development Services Committee or City Council for either a Planning Act public meeting and/or a decision to deny or approve the application, such as applications to amend the O.O.P. or Zoning By-law 60-94 or applications for draft plans of subdivision. Such engagement would allow an applicant to obtain feedback from the community and modify their plans accordingly prior to submission of the formal application and holding the statutory Planning Act public meeting with the Economic and Development Services Committee. This may provide more comfort for the Committee to make a recommendation for approval or denial of the application at the first Committee meeting that the proposal is considered, including at a Planning Act public meeting.

Staff recommend that Council adopt the following amendments to Pre-consultation By-law 22-2023 and General Fees and Charges By-law 13-2003, as amended. This is in consideration of the foregoing commentary, the experience staff has had to date with implementing Pre-consultation By-law 22-2023 (including associated discussions with

B.I.L.D. arising from B.I.L.D.'s appeal of O.P.A. 212), and the need to use staff time efficiently.

1. It is recommended that the parameters of Stage 2 of the pre-consultation process be expanded to include an option for an applicant to submit their full set of plans, reports, materials and information for a technical review. The recommended changes to By-law 22-2023 are outlined in Attachment 4. It is also recommended that a related amendment be made to the General Fees and Charges By-law 13-2003, as amended, to allow an applicant to request a technical review of their materials at the Stage 2 pre-consultation phase. It is recommended that the initial fee be set at and comprise 50% of the related planning application fee, with the remaining 50% payable when the planning application is formally submitted. The initial 50% fee would be non-refundable under the Planning Act with only the remaining 50% fee (payable when the related zoning by-law amendment application or site plan approval application is formally submitted) subject to the potential application of the graduated refund rules of the Planning Act. In circumstances where an applicant does not request a technical review during Stage 2 of the pre-consultation, the non-refundable \$500 fee will continue to apply. Staff anticipate that most potential applicants for zoning by-law amendments and draft plans of subdivision, and many potential applicants for site plan approval, would avail themselves of this option for the following reasons:
 - they will be familiar with it in other municipalities;
 - they will want to have constructive dialogue on technical details with the City and external agencies prior to submission of the formal application(s);
 - they will be focused on getting approval rather than a fee refund; and,
 - undertaking a technical review as part of the pre-consultation process would improve overall timelines associated with pre-consultation and application processing.
2. Section 4 of Pre-consultation By-law 22-2023 is recommended to be amended to stipulate that pre-consultation meetings may be held between City staff and applicants, and that external agencies may be invited. This is in lieu of stipulating that the meeting is intended to include external agencies as a core component and requirement of the meeting. The Planning Act does not stipulate that municipalities can require an applicant to consult with a third party. Rather, it only states that the municipality can require an applicant to consult with the municipality. This change is shown in Attachment 4 to the Report.
3. New sections are recommended to be added to Pre-consultation By-law 22-2023 to grant the Commissioner of Economic and Development Services authority to waive certain requirements for pre-consultation. Situations may arise where there is no or only marginal benefit for the City to mandate pre-consultation for a certain development proposal and also no risk to the City of having to refund fees as a result of not mandating the stage(s) of pre-consultation when a planning application is ultimately submitted.

4. New sections are recommended to be added to Pre-consultation By-law 22-2023 to bypass the requirement for certain stages of pre-consultation for applications for draft plan of condominium and site plan approval in the following circumstances:
 - (a) A site that was subject to a zoning by-law amendment for a development proposal will have been subject to certain technical review as part of the consideration of the zoning by-law amendment application. Accordingly, it is recommended that any subsequent related site plan application only be subject to Stages 2 and 3 of the pre-consultation process if said application is submitted within two years of the passing of the zoning by-law amendment and the development proposal is generally consistent with the zoning in place; and,
 - (b) Applications for draft plan of condominium that do not include the conversion of a site or building from rental tenure to condominium tenure are not complex applications and do not include extensive submission requirements. Further, applications for draft plan of condominium are not subject to refund rules under the Planning Act. Typically applicants submit standard draft plan of condominium applications once the building is under construction, and typically applicants for common elements draft plans of condominium submit the application concurrently with a site plan application. Often requirements related to condominiums are included as conditions of approval. Approval or denial of a condominium does not prevent a development from taking place. A condominium is a form of tenure, not a form of development. Accordingly, it is recommended that Pre-consultation By-law 22-2023 be amended to remove the requirement for applicants for draft plans of condominium to submit a Stage 1 pre-consultation request. Applicants would continue to be required to undertake Stages 2 and 3 of the pre-consultation process to ensure fees and materials are confirmed and are in order.

While there is no fee refund or appeal mechanism within the pre-consultation process, City staff endeavour to and will continue to review pre-consultation submissions in a timely manner while providing quality comprehensive comments to the applicant. Staff are usually able to respond to pre-consultations within 45 to 60 days.

Through pre-consultation, staff will recommend and strongly encourage applicants to undertake their own privately managed public engagement session(s) with the surrounding community, in the form of a public meeting, open house or P.I.C. In the past, some applicants have undertaken their own public engagement sessions prior to finalizing their plans at the suggestion of staff. For example, the owners of 144 and 155 First Avenue held an in-person community open house in November 2022 at Royal Canadian Legion Branch 43 and had a number of consultants present to show preliminary plans of their proposal and to answer any questions from members of the public that attended. Staff also attended to observe.

Staff will endeavour to develop best practices for privately run public engagement as part of pre-consultation to help guide both staff and applicants in arranging private public engagement sessions.

Staff will also endeavor to create standardized Terms of Reference (T.O.R.) for various studies/reports that are required as part of a complete application. T.O.R.s assist

applicants in understanding the elements the City is expecting the study/report to address and, in some cases, the methodology for undertaking the study/report.

The above noted recommended changes to Pre-consultation By-law 22-2023 are not affected by the appeal to O.P.A. 212.

5.4 Pre-Consultation Fee Adjustment

Section 5.3 of this Report recommends providing applicants with the option to submit their plans, reports, materials and information as part of Stage 2 of the pre-consultation process, in order to shift the initial technical review of proposals to the pre-consultation stage which is not subject to the fee refund rules under the Planning Act.

In support of this change, it is recommended that a fee be implemented for this optional technical review exercise that is equivalent to 50% of the actual formal application fee (see Attachment 5). The remaining 50% would be payable once the application is formally submitted.

For example, if a proposal requires a minor zoning by-law amendment and the applicant chooses to include the initial technical review of the proposal as part of Stage 2 of the pre-consultation process, the applicant would pay \$5,222 at Stage 2 and then the remaining \$5,222 when the zoning by-law amendment application is formally submitted. The overall fee for the zoning by-law amendment application would total \$10,444 as per General Fees and Charges By-law 13-2003, as amended.

In the event the application does not advance beyond Stage 2, the applicant will not have paid the full application fee. However, the City will have covered its cost related to the technical review at Stage 2.

In the event the application fee increases between Stage 2 and the formal submission of the application (normally it increases 3% every January 1st), the applicant will be required to pay 50% of the fee applicable at the time of the formal application submission. For example, if the minor rezoning fee increases 3% from \$10,444 to \$10,758, the applicant would have paid \$5,222 in 2023 for the Stage 2 pre-consultation and then \$5,379 for the rezoning application in the following calendar year.

In the event the applicant does not opt for the technical review during Stage 2 of the pre-consultation process but instead submits updated preliminary plans, the Stage 2 pre-consultation fee will remain at \$500 (see Attachment 5). This \$500 payment will be credited towards the future application if it is submitted within a certain timeframe.

It is recommended the revised fee take effect on June 27, 2023.

Attachment 5 outlines the recommended amendments to the relevant section of Schedule "D" of the City's General Fees and Charges By-law 13-2003, as amended.

6.0 Financial Implications

The financial implications are substantial as a result of potential development application fee refunds to applicants for zoning by-law amendment applications and site plan approval applications.

Development application fees are intended to help recover costs related to the processing and review of development applications, such as staffing. If an applicant is refunded their application fees due to Bill 109 changes to the Planning Act, regardless of whom caused the delay, the cost to refund the developer will be borne entirely by the City and its taxpayers.

Without continuous process improvements, the City may have to refund up to approximately \$600,000 annually in zoning by-law amendment and site plan approval application fees.

The recommended changes to Pre-consultation By-law 22-2023 and General Fees and Charges By-law 13-2003, as amended, are expected to help the City protect the revenue collected for proposals to amend Zoning By-law 60-94, as amended, and applications for site plan approval, which are based on the principle of “development paying for development”.

7.0 Relationship to the Oshawa Strategic Plan

The Recommendation advances the Accountable Leadership goal and Economic Prosperity and Financial Stewardship goal of the Oshawa Strategic Plan.



Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,
Planning Services



Warren Munro, HBA, MCIP, RPP, Commissioner,
Economic and Development Services Department

Council Adopted Amendment 212 to the Oshawa Official Plan (Under Appeal)

Part I: Introduction

Purpose

The purpose of this Amendment to the City of Oshawa Official Plan is to:

1. Amend Section 9, Implementation, of the Oshawa Official Plan by amending Policy 9.3.4 to specify additional requirements that shall be satisfied, as appropriate, prior to a holding symbol being removed to allow development to proceed;
2. Amend Section 9, Implementation, of the Oshawa Official Plan by adding a new Section 9.18, Pre-Consultation, that creates a mandatory requirement for an applicant intending to submit an application to amend the Oshawa Official Plan, Samac Secondary Plan and/or Zoning By-law 60-94, for approval of a proposed Draft Plan of Subdivision and/or a proposed Draft Plan of Condominium, or for Site Plan Approval to consult with the City before submitting an application; and,
3. Amend Section 9, Implementation, of the Oshawa Official Plan by adding a new Section 9.19, Complete Application, that specifies the types of studies, plans, material and other information that may be required for an application to amend the Oshawa Official Plan, Samac Secondary Plan and/or Zoning By-law 60-94, for approval of a proposed Draft Plan of Subdivision and/or a proposed Draft Plan of Condominium, or for Site Plan Approval to be determined complete.

Location

This Amendment is general in nature and applies to the City as a whole.

Basis

The Council of the Corporation of the City of Oshawa is satisfied that this Amendment to the City of Oshawa Official Plan, as amended, is appropriate.

Part II: Actual Amendment:

The City of Oshawa Official Plan is hereby amended by:

1. Amending Policy 9.3.4 by:
 - Deleting the word "and" at the end of paragraph (h);
 - Deleting the period "." at the end of paragraph (i) and replacing with a semicolon ";" and;

- Adding new paragraphs (j) and (k) as follows:
 - "(j) That a subdivision, condominium or any other development agreement required by the City be fully executed by all parties; and
 - (k) That any studies, plans, material or other information that may be required pursuant to Policy 9.19.3 of this Plan be submitted and deemed satisfactory by the City as a condition of a holding symbol being removed."

2. Adding a new Section 9.18, Pre-Consultation, as follows:

"9.18 Pre-Consultation

9.18.1 Applicants shall consult with the City prior to submitting:

- (a) An application to amend the Oshawa Official Plan;
- (b) An application to amend the Samac Secondary Plan;
- (c) An application to amend the Zoning By-law;
- (d) An application for approval of a proposed Draft Plan of Subdivision;
- (e) An application for a proposed Draft Plan of Condominium;
- (f) An application for Site Plan Approval; and,
- (g) Applications for any combination of Items (a) through (f).

9.18.2 One or more pre-consultation meetings will be held with City staff and any other external agency or public authority that the City determines appropriate.

9.18.3 Through the pre-consultation process, the City shall identify a scoped list of studies, plans, material and other information as set out in Policy 9.19.3 that are required for the application to be determined complete. Notwithstanding the scope of this list, further additional information may be required to be submitted to the satisfaction of the City pursuant to Policy 9.19.2 of this Plan for the application to be determined complete.

9.18.4 The City in consultation with applicable agencies may also prepare terms of reference for any of the required studies, which set out the required study information and analyses.

9.18.5 The studies, plans, material and/or background information required to accompany a request for a Pre-consultation meeting to be arranged shall be outlined in a Pre-consultation By-law."

3. Adding a new Section 9.19, Complete Application, as follows:

"9.19 Complete Application

9.19.1 The City may require any combination of the studies, plans, material or other information outlined in Policy 9.19.3 of this Plan to be submitted in support of an application referenced in Policy 9.18.1, prior to that application being determined to be complete.

- 9.19.2 In order for an application to be determined to be complete, the City, at its sole discretion, may require the submission of any additional or supplementary studies, plans, material or other information among those listed under Policy 9.19.3 of this Plan. This may be required in the event that the City determines such is required to address, to the City's satisfaction, an information gap identified subsequent to the release of the scoped list of requirements initially identified pursuant to Policy 9.18.3 of this Plan.
- 9.19.3 Any of the following studies, plans, material or other information may be determined by the City, at its sole discretion, to be required as part of a complete application:

Planning

- Planning Rationale/Justification Report
- Draft Zoning By-law Amendment
- Draft Official Plan Amendment
- Public Consultation Strategy
- Rental Conversion Study
- Condominium Declaration
- Draft Plan of Subdivision
- Draft Plan of Condominium
- Municipal Comprehensive Review

Urban Design

- Urban Design Study
- Urban Design Guidelines
- Architectural Control/Streetscape Guidelines
- Shadow Study
- Park Concept Plan
- Campus Master Plan
- Site Development Phasing Plan
- Scenic Vistas and Views Impact Analysis
- Site Plan
- Elevations
- Floor Plans
- Landscape Plan and Details
- Landscape/Site Improvement Cost Estimate
- Concept Plan for Blocks in Subdivision

Environment

- Environmental Impact Study
- Environmental Appraisal Report
- Tree Preservation Study/Inventory
- Hydrological Evaluation
- Watershed Study
- Sub-Watershed Study
- Landform Conservation Plan

- Water Budget and Conservation Plan
- Wildlife Risk Management Assessment
- Hydrogeological Assessment
- Reliance Letter for Hydrogeological Assessment
- Fluvial Geomorphology Assessment
- Stream Corridor Protection Limit Study
- Arborist Report
- Development Limits/Constraints Map
- Bird Friendly Design Details

Servicing

- Stormwater Management Study
- Master Environmental Servicing Plan
- Functional Servicing Report
- Calcium Carbonate Assessment
- Storm Drainage Scheme
- Erosion and Sediment Control Plans
- Grading Plan
- Servicing Plan
- Phasing Plan
- Soils Study (Geotechnical)
- Reliance Letter for Soils Study (Geotechnical)
- Slope Stability Assessment

Transportation

- Transportation Analysis Report/Study
- Functional Alignment Study
- Traffic Impact Study
- New Development Checklist for Traffic Calming
- Traffic Calming Report
- Parking Study
- Vehicle Queuing Study
- Municipal Class Environmental Assessment
- Truck Maneuvering/Swept Path Analysis Plan

Nuisance

- Noise Study
- Vibration Study
- Dust Study
- Odour Study
- Lighting Study/Photometric Plan
- Land Use Compatibility/Air Quality Assessment
- Development Viability Assessment regarding adjacency to rail

Financial

- Fiscal Impact Study

- Reserve Fund Analysis

Aggregates

- Mineral Aggregate Extraction Plan/Study

Heritage/Archaeological

- Archaeological Assessment
- Ministry Clearance of Archaeological Assessment
- Heritage Impact Assessment/Study
- Heritage Research Report
- Cultural Heritage Resource Assessment
- Conservation Plan

Other Information

- Written response to pre-consultation comments
- Record of completion of pre-consultation in accordance with any applicable pre-consultation by-law
- Cover letter
- Application Fee Calculation
- Phase 1 Environmental Site Assessment
- Phase 2 Environmental Site Assessment
- Record of Site Condition
- Reliance Letter for Environmental Site Assessment
- Minimum Distance Separation Information
- Waste Disposal Assessment
- Retail/Market Impact Study
- Airport Compatibility Study
- Airport Ceiling Plan/Flight Path Plan
- Building Audit
- Well and Septic Review
- Draft 40R Plan
- Survey
- Oshawa Ontario Building Code Design Information Sheet
- Development Review Checklist: Front End (Waste) Collection Services on Private Property
- Accessibility Plan

Peer Review

The City may require that a peer review of a particular study/report be completed, at the applicant's sole cost, by a qualified third party consultant approved or selected by the City and submitted to the satisfaction of the City, in order for the application to be determined to be complete. Peer reviews may be undertaken for studies/reports including, but not necessarily limited to, the following:

- Noise Study
- Vibration Study

- Dust Study
- Odour Study
- Traffic Impact Study
- Land Use Compatibility/Air Quality Assessment
- Development Viability Assessment
- Fiscal Impact Study
- Mineral Aggregate Extraction Plan/Study
- Environmental Impact Study
- Minimum Distance Separation Information
- Waste Disposal Assessment
- Retail Market Impact Study

Agency Comments, Conditions and/or Approvals

If lands subject to an application are located in whole or in part within the following applicable area(s), comments, conditions and/or approvals from the applicable agency shall be provided with the application in order for it to be determined to be complete.

- Within 300 metres of a rail corridor;
- Within 500 metres of a gas, oil or petroleum pipeline corridor;
- Within 400 metres of the Highway 401 or Highway 407 East corridors;
- Within 300 metres of the corridor of the planned Lakeshore East GO rail extension;
- Within 750 metres of an oil, gas or petroleum compressor station; or,
- Within 30 metres of a hydro transmission corridor."

Part III: Implementation

The provisions set forth in the City of Oshawa Official Plan, as amended, regarding the implementation of the Official Plan, shall apply in regard to this Amendment.

Part IV: Interpretation

The provisions set forth in the City of Oshawa Official Plan, as amended, regarding the interpretation of the Official Plan, shall apply in regard to this Amendment.

Cassels

March 27, 2023

Hand Delivered

City Clerk
The Corporation of the City of Oshawa
Oshawa City Hall
50 Centre Street South
Oshawa, ON L1H 3Z7

sleisk@cassels.com
tel: +1 416 869 5411
file # 51989-3

To the City Clerk:

**Re: Notice of Appeal, s. 17(24) of the *Planning Act*
City of Oshawa
By-law 23-2023, Official Plan Amendment 212**

We are counsel to the Building Industry and Land Development Association (“**BILD**”). This letter constitutes an appeal of City of Oshawa By-law 23-2023, adopting Official Plan Amendment 212 (“**OPA 212**”) to the City of Oshawa’s Official Plan (“**OP**”) to the Ontario Land Tribunal pursuant to s. 17(24) of the *Planning Act*. BILD submitted correspondence to the City in advance of Council’s decision to adopt OPA 212, a copy of which is enclosed. BILD hereby appeals OPA 212 for the following, among other, reasons.

OPA 212

On February 27, 2023, in response to Bill 109, *The More Homes for Everyone Act, 2022*, the City of Oshawa adopted OPA 212. Bill 109 is aimed at making it faster and less expensive to build all types of housing, and amends the *Planning Act* to, among other things, require the refund of application fees if a municipality fails to make a decision within the legislated timeframes. In response to Bill 109, the City amended its OP to impose additional pre-application requirements. BILD appeals OPA 212 in its entirety.

Pre-application consultation with and clearances from public bodies

OPA 212 imposes the potential for mandatory pre-consultation with third parties prior to submission of a complete application, including the potential to require that proponents obtain comments, conditions or approvals from other agencies prior to submission of a complete application. Such clearances amount to pre-approval requirements in advance of submission of a formal application.

Pre-application technical review

OPA 212 provides that applicants may be required to provide written responses to pre-consultation comments as part of a complete application and allows the City to make additional requests upon review of a pre-application submission, with such subsequent additional requests becoming requirements of a complete application. OPA 212 further provides that the City may require a peer review of submitted studies and reports prior to deeming an application complete. These requirements amount to a multi-submission, substantive and technical review of an application in advance of an application being deemed complete.

OPA 212 contravenes the *Planning Act* and does not represent good planning

Applicants have a statutory right to submit development applications to the applicable approval authority and to have these considered in accordance with the *Planning Act*, as well as other applicable policy and legislation. The only statutory pre-condition that a municipality may impose is a requirement to consult with *the municipality* prior to the submission of an application. There is no authority to require an applicant to engage or seek clearance from third parties in advance of an applicant formulating a complete application. The only substantive pre-condition to a complete application is the submission of the “information and material” listed by regulation under the *Planning Act* and such other “information or material” a municipality has listed in its official plan.

Third party consultation, clearances and technical reviews are not “consultation with the municipality”

In our view, the ordinary meaning of “consult” must be applied to determine the scope of permissible pre-application requirements, commonly defined as seeking information and advice from another. Accordingly, the purpose and intent of this pre-application step is for municipalities to provide preliminary direction and advice in advance of the submission of a formal application and the commencement of the statutory review process, and in our view, does not include the ability to require non-statutory pre-application clearances outside of the *Planning Act* or to otherwise prevent an applicant from exercising its statutory right to make an application.

Similarly, peer reviews of application materials cannot be consideration consultation but rather is a substantive substitute for municipal review of a complete application.

Third party consultation, clearances and technical reviews are not “information or materials”

Further, third party consultation, clearances or technical peer reviews cannot be viewed as something permitted or intended to be permitted by the legislature as part of the “information or material” that may be required as part of a complete application. OPA 212 is an attempt to

impose additional processes that a municipality does not have authority to impose directly, and for which there is no applicable timeframe. While these matters may be an important part of the planning process, such reviews and clearances are matters of process and cannot be considered information or materials required for a complete application.

Premature clearances and technical reviews undermine good planning

Finally, OPA 212 fails to support the purpose of the *Planning Act* as reflected in s. 1.1, and has insufficient regard for matters of provincial interest, including those generally identified at s. 2(h), (j), (m), and (n) of the *Planning Act*. While planning is, by practice, often an iterative process, the process established in the *Planning Act* is the basis through which orderly development occurs, sufficient housing is provided, planning activities proceed in a coordinated manner, and planning conflicts are resolved. Imposing mandatory process requirements before an application is accepted and deemed complete is contrary to the purpose and process set out in the *Planning Act* and is not good planning.

OPA 212 is inconsistent with the PPS and does not represent good planning

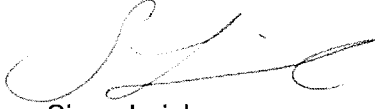
The Provincial Policy Statement, 2020 (“**PPS**”) provides policy direction on land use planning to promote strong and liveable communities, a strong economy, and a clean and healthy environment. Planning authorities are to manage growth and development in an effective and efficient manner that supports a range of housing options to respond to current and future needs. The appropriate consideration of these policies occurs through the planning process established by the *Planning Act*. To the extent third party clearances may differ from the very limited and specific role of third party agencies in land use planning matters identified throughout the PPS, requiring third parties to provide clearance in advance of a complete application and in a manner that may prevent an applicant from exercising its statutory right to submit an application and have it reviewed and considered by the statutory approval authority (Council) is not supported at law or by the PPS. To require clearances in advance of a complete application undermines good planning. By mandating extra-statutory pre-application processes, OPA 212 will extend development timelines, increase the costs to develop, and adversely affect the development and delivery of housing and other development in the City of Oshawa. In particular, section 4 of the PPS requires municipalities to adopt official plan policies to identify and protect provincial interests, including integrated processes to achieve the policies of the PPS. OPA 212 is therefore inconsistent with the policies of the PPS.

In summary, by mandating extra-statutory pre-application processes OPA 212 interferes with an applicant’s statutory right to submit a development application under the *Act* and circumvents the purpose of Bill 109 to deliver housing in a timely and efficient manner. OPA 212 is inconsistent with the PPS, is contrary to the *Planning Act*, is not in the public interest, and does not represent good planning.

Please find enclosed the completed Ontario Land Tribunal appeal form, which indicates payment of the appeal fee by credit card through the Tribunal's offices. Please contact the undersigned should you have any questions.

Yours truly,

Cassels Brock & Blackwell LLP



Signe Leisk

SL/AP/nv
Encls.



December 9, 2022

Mayor Dan Carter and Members of Council

City of Oshawa
50 Centre Street South
Oshawa, ON
L1H 3Z7

Sent via email to clerks@oshawa.ca

RE: CITY OF OSHAWA RESPONSE TO BILL 109 AND AMENDMENTS TO THE PLANNING ACT

December 12th Council Consideration of Changes to Planning Review and Approvals Processes and Fees

The Building Industry and Land Development Association (BILD) is in receipt of staff report entitled *Changes to Planning Review and Approvals Processes and Fees*, dated November 23, 2022. We are submitting this information and request for deferral in advance of City Council's consideration of the item for approval on December 12th.

On behalf of our Durham Chapter members, BILD appreciates the opportunity to provide the following comments regarding this work.

Reflecting on *Bill 109, More Homes for Everyone Act, 2022*

We acknowledge that the purpose of *Bill 109, More Homes for Everyone Act, 2022* is to increase housing supply and choice for families and individuals across the province. According to the provincial government, Bill 109 is an attempt to implement some of the Housing Affordability Task Force's recommendations, as outlined in a report released in February this year. We also understand that we all have a role to play to ensure that the true intentions of this Bill are carried forward correctly.

The key amendment we are addressing through this correspondence is the proposed changes to the approval process for zoning by-law amendment and site plan applications, which would require municipalities to refund application fees on a graduated basis (i.e. 50%, 75% or 100% depending on the number of days following the application) if a decision is not made within the legislative timelines. This change would apply to applications made on or after July 1, 2023. The intent of this change is to incentivize municipalities to make timely decisions.

General Sentiments of the Legislative Timelines Amendment

BILD and our members recognize the pressure that this amendment creates for municipalities to uphold the legislative timelines that have lengthen over the years. We also recognize that BILD members too have a role to play to be in keeping with the timelines by being timely with their responses to application comments and other requests for information. With this amendment, both the industry and the municipalities have a collective interest to meet the timelines; developers' project proformas are based on municipal timelines as well, and any delay in the approval process can result in carrying costs incurred by our members and violations associated to purchase and sale agreements.

BILD's Response to the City of Oshawa's Approach

As identified in the aforementioned staff report, and something that has been explored by some municipalities is that approach to frontload substantive issues that are identified in the project proposal prior to deeming an application complete. This also means that an applicant must ensure that a development application is complete prior to the start of the 'clock' of the legislative timeline. BILD and its members believe that parsing out large segments of the development application process before allowing the 'clock' to start on the legislative timelines is not in keeping with the spirit and intent of the legislation. It effectively removes the bulk of the process that would take the majority of the time to address in a typical development application.

As part of Bill 109, municipalities must adhere to the legislative timelines for the approval of a development application. As a matter of law, any policies or procedures that aim to circumvent or delay the typical timeline should be avoided. That means that municipalities must ensure that the application timeline is triggered once an application has been submitted. It also means that delaying the date that the clock starts on an application, through the pre-application or otherwise should also be avoided.

In this regard, please find the enclosed correspondence from Cassels regarding the municipal implementation of Bill 109 on the topics of pre-application, complete application requirements and potential waivers.

Additional Considerations

Development Application Review Fees

We acknowledge that as part of the City's response to Bill 109 requirements, the City's Planning Application Fees are proposed to be updated effective January 1, 2023. Table 3 in the staff report outlines the justification for each fee increase. BILD is requesting that prior to the approval of any fee changes, more fulsome justification be provided. The removal, addition or change in any fees affecting the industry must be accompanied with consultation. As well, consideration must be given for the investigation of fees outside of the legislative requirements within *the Planning Act*.

For example, increasing fees to simply be in line with other municipalities is not understood as a justifiable reason. The report proposes that several fees be increased significantly, such as the fee for Draft Plan Approval, which would see an increase in the base fee of approximately 131% as of January 1st and the only justification provided is that the resulting fee is more comparable to other municipalities. Further justification on the basis of cost recovery is needed prior to the approval of any fee changes. **A deferral or transitional policy until appropriate justification and consultation on these increases is made available to the industry is requested at this time.**

Concurrent Applications

Based on the proposed changes to the Planning Application Fees, it is understood that the option to submit a joint application to amend the Official Plan/Part II Plan/Secondary Plan and the Zoning By-law would be removed. Concurrent applications ensure that duplicative work or potentially conflicting issues in the planning and design process can be avoided or addressed as they arise. BILD strongly encourages that municipalities that currently have concurrent planning application processes (OPA, ZBA, SPA) should not be decoupled into sequential

applications in order to allow for additional time to process applications. This is not keeping with the spirit and intent of the legislation.

Site Plan Approval and Conditions (Streamlining)

BILD and our members support planning staff's venture in exploring opportunities to streamline the Site Plan Approval process. To aid in this venture, BILD recommends that this should include making sure unwarranted reviews do not occur, information requests are made appropriate, in addition to having a continuous cycle of committee and council meetings (including in the summer).

Final Sentiments

Due to recent updates from the province and the anticipated new implementation date of July 1, 2023 for the legislative requirements, BILD is requesting that Council defer its final decision on the item and refer the matter back to staff. A deferral on this matter will provide staff with additional time to fully develop the proposed new pre-consultation system as originally intended by the legislation. As an example, on December 5th, City of Pickering Council referred the City's response to Bill 109 back to staff with the intention of having them report back to Council with clearer direction no later than June 30, 2023. We commend the City of Pickering for this approach and encourage others to consider it.

As industry, we would like to move forward with our municipal partners to create system of enhanced trust and collaboration. We want to continue to work with you, as our partners in prosperity and community building, to develop a transparent and cooperative development application process that works for all parties. We hope these process changes will be the start of new way of thinking, and working together that will benefit current and future generations.

Thank you again for the opportunity to submit these comments. As your community building partner, we trust that you will take them into careful consideration as you finalize this work.

Kind regards,



Sophie Lin
Planner, Policy & Advocacy

- CC: Frank Filippo, BILD Durham Chapter Chair
- Paula Tenuta, SVP, BILD
- Danielle Binder, Director, BILD
- Victoria Mortelliti, Manager, BILD
- Members of the BILD Durham Chapter

The Building Industry and Land Development Association is an advocacy and educational group representing the building, land development and professional renovation industry in the Greater Toronto Area. BILD is the largest home builders' association in Canada, and is affiliated with the Ontario Home Builders' Association and the Canadian Home Builders' Association. It's

1,500 member companies consists not only of direct industry participants but also of supporting companies such as financial and professional service organizations, trade contractors, as well as manufacturers and suppliers of home-related products.



December 2, 2022

Danielle Binder
Director, Policy & Advocacy
Building Industry and Land Development Association
20 Upjohn Road
Suite 100
Toronto, ON M3B 2V9

sleisk@cassels.com
Tel: +1 416 869 5411
Fax: +1 416 640 3218
File: 51989-3

Dear Ms. Binder,

Re:

You have asked us to consider generally the amendments to the pre-application consultation process a number of municipalities are proposing in response to Bill 109, *The More Homes for Everyone Act, 2022*. Commencing January 1, 2023, an increasing portion of application fees will be refundable if a municipality fails to make a decision within the applicable statutory timelines. We understand a number of municipalities are considering an enhanced pre-application process of detailed submissions, technical review and comment, and broader councillor and community engagement, prior to submission of an application under the *Planning Act* and the commencement of the statutory review period.

Bill 109 represents the first step in the Province's implementation of the recommendations of the Ontario Housing Affordability Task Force Report, meant to reduce overall cost, delay and cut red tape to achieve the goal of delivering 1.5 million new homes over the next 10 years. The clear purpose of the amendments is to encourage faster decisions to facilitate the delivery of housing.

We anticipate that enhanced consultation and cooperation between applicants and a municipality will be required in order to meet the timeframes imposed by the *Planning Act*, and that in many cases, applicants would prefer continued collaboration rather than a refusal and the need to pursue appeals to the Ontario Land Tribunal. There may be many applicants who will welcome early consultation and feedback prior to submission of a formal application. However, in our view, any such extra-statutory pre-application process must remain voluntary and a municipality cannot use this process as a means to prevent the lawful submission of an application and the commencement of the applicable review periods under the *Planning Act*.

Limits to the requirement to consult

Applicants have a statutory right to submit development applications to the applicable authority and to have these considered in accordance with the *Planning Act*, as well as other applicable policy and legislation. The only statutory pre-condition that a municipality may impose is a requirement to consult with the municipality prior to the submission of an application. In our view, the ordinary meaning of "consult" must be applied to determine the scope of permissible

pre-application requirements, commonly defined as seeking information and advice from another. Accordingly, the purpose and intent of this pre-application step is for municipalities to provide preliminary direction and advice in advance of the submission of a formal application and the commencement of the statutory review process and in our view does not include the ability to impose a non-statutory pre-application regime outside of the *Planning Act* or to otherwise prevent an applicant from exercising its statutory right to make an application.

Further, it is our view that the authority to require mandatory consultation with a municipality or planning board does not extend to mandatory consultation with review agencies, members of the public, or other persons and public bodies. The *Planning Act* has established these as municipal requirements and neither a plain and ordinary meaning or purposive interpretation of the *Planning Act* supports the imposition of additional requirements through the consultation process.

As stated by the then Ontario Municipal Board in *Top of the Tree Developments Inc, Re, 2007 CarswellOnt 7921*:

Yes, a Municipality can surely demand for materials and the information in the course of an evaluation of an application at any given time. There is and never was a legislative impediment for it to do so via its policy in an Official Plan. But the Municipality cannot demand it for the purpose of a complete application, and only pursuant to some tangential policy.

Limits on complete application requirements

While municipalities have the authority to require “other information and material” beyond the requirements prescribed under the *Planning Act*, such additional requirements for complete applications must be contained in adopted and in force official plan policies. Importantly, such requirements are limited to the submission of “information or material” and not a means to impose additional steps or processes, such as peer reviews or consultation, that a municipality does not have authority to impose directly.

Waiver Agreements

A number of municipalities have proposed a form of agreement for the withdrawal and resubmission of an application prior to the expiry of the legislated review period. In our view, while an agreement will not be enforceable to override statutory consequences, a voluntary agreement to withdraw an application in advance of a refund deadline may be possible, together with associated amendments to any applicable fee by-laws. However, we caution that the withdrawal and resubmission of an application will have significant implications under various statutes beyond the *Planning Act*, including but not limited to the *Ontario Heritage Act* and *Development Charges Act 1997*, that parties should be mindful of.

In summary, in our view, the establishment of additional mandatory requirements for submissions and engagement before otherwise valid applications will be received by a municipality for the purpose of preventing the statutory review period under the *Planning Act*

from commencing is contrary to the purpose and intent of the *Planning Act*, as amended, and beyond the authority of municipalities in Ontario and may be subject to judicial review.

We trust the foregoing is sufficient for your purposes. We would be pleased to respond to any further questions or concerns.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in cursive script, appearing to read 'S.L.', is centered below the firm name.

Signe Leisk
Partner

SL/AP

Recommended Amendments to Pre-Consultation By-law 22-2023

[**Note:** Black text represents existing text. Red text represents text proposed to be added (i.e. **text**). Black struck out text represents text to be deleted (i.e. ~~text~~.)]

Pre-consultation By-law

being a by-law to require an applicant to consult with the City of Oshawa prior to submitting applications to amend an official plan or the zoning by-law, for site plan approval, or for approval of a draft plan of subdivision or a draft plan of condominium.

Recitals

- (a) Subsections 22(3.1), 34(10.0.1), 41(3.1) and 51(16.1) of the Planning Act, R.S.O. 1990 c. P13 authorize municipalities to pass by-laws to require applicants to consult with the municipality before submitting applications to amend an official plan or the zoning by-law, for site plan approval, or for approval of a draft plan of subdivision or a draft plan of condominium.
- (b) The Oshawa Official Plan stipulates that an applicant is required to consult with City staff prior to submitting an application to amend the Oshawa Official Plan, the Samac Secondary Plan or the Zoning By-law, for Site Plan Approval, or for approval of a Draft Plan of Subdivision or a Draft Plan of Condominium.

NOW THEREFORE it is enacted as a by-law of The Corporation of the City of Oshawa by its Council as follows:

1. Applicants shall consult with the City of Oshawa prior to submitting an application to the City to amend the Oshawa Official Plan, the Samac Secondary Plan or a Zoning By-law passed under Section 34 of the Planning Act, for Site Plan Approval, or for approval of a Draft Plan of Subdivision or a Draft Plan of Condominium.

Stage 1

2. The City will circulate the preliminary plan(s) to various branches, departments and external agencies for review and comments and the identification of a list of studies, plans, material and other information as set out in the Oshawa Official Plan that is required for the application(s) to be determined complete.
3. The City shall provide a package of comments, including the identification of the information and material required for a complete application, to the applicant.
4. A meeting may be held between ~~City staff, the applicant and external agencies at the discretion of the City~~ **City staff and the applicant** to discuss the preliminary plan(s) and Stage 1 comments. **The City may invite external agencies to said meeting.**

Stage 2

5. Subsequent to the provision of Stage 1 comments, the applicant shall submit a preliminary plan, as may be revised, and a request for a meeting with City and agency staff.
6. The applicant is required to demonstrate to City staff and external agencies how the preliminary plan has or has not changed as a result of Stage 1 comments and discussion.
- 6.1 The applicant may submit the studies, plans, material and other information identified under Stage 1 for technical review by the City and external agencies as part of Stage 2. An enhanced fee may be established pursuant to the Planning Act in the City's General Fees and Charges By-law, as amended, if studies, plans, materials and other information are submitted for technical review as part of Stage 2.
7. Stage 2 is an opportunity to further discuss and clarify Stage 1 comments and requirements and the proposed plan(s).

Stage 3

8. The applicant shall submit a checklist outlining the studies, plans, material and other information the City identified as required to support the application(s), and the studies, plans, material and other information the applicant intends to submit with the application(s).
9. Stage 3 is an opportunity for the applicant to confirm the documents they are intending to submit will be sufficient to constitute a "complete application" to the extent determined through the pre-consultation process and in the Oshawa Official Plan and provides City staff an opportunity to verify submission requirements identified during the pre-consultation process and to verify application fees.

General

10. A pre-consultation will only be valid for one year following the completion of Stage 1. If a planning application is not submitted within one year, the applicant will be required to submit another pre-consultation request and start from Stage 1 again.
11. If an applicant changes their plans substantially at any time, a new pre-consultation will be required starting at Stage 1, unless, in the opinion of the Commissioner of Economic and Development Services a new pre-consultation is not required.
- 11.1 The Commissioner of Economic and Development Services may waive the requirement for Stage 1 and Stage 2.
12. A planning application(s) submitted to the City prior to completion of all three stages of the pre-consultation process will not be considered a complete application under the Planning Act and Section 9.19 of the Oshawa Official Plan, unless the Commissioner of Economic and Development Services has waived the requirement under Sections 11 or 11.1 of this by-law, or the application is for site plan approval

and has been submitted within the two year window described in Section 13.1 of this by-law.

13. If more than one application is required for planning approval in support of a single development proposal, a single consolidated pre-consultation submission can satisfy the requirement to consult.

13.1 A proposal which requires an application for Site Plan Approval and which is related to a previous approval of an amendment to Zoning By-law 60-94, as amended, shall not be subject to a Stage 1 pre-consultation if a Stage 2 pre-consultation request is submitted within two years of the date of the approval of the Zoning By-law Amendment.

13.2 A proposal which requires an application for Draft Plan of Condominium that is not related to the conversion of property from rental tenure to condominium tenure but which is related to an application for Site Plan Approval shall not be required to submit a Stage 1 pre-consultation if a Stage 2 pre-consultation request is submitted within one year of the date of site plan approval or of the date of the site plan agreement, whichever is most recent.

Transition

14. Any pre-consultation request completed prior to the effective date of this By-law shall be subject to the Stage 2 and 3 requirements of this By-law and any related planning applications to amend the Oshawa Official Plan, Samac Secondary Plan or the Zoning By-law, for Site Plan Approval, or for approval of a Draft Plan of Subdivision or a Draft Plan of Condominium must be submitted no later than December 31, 2023.

Recommended Amendment to a Part of Schedule “D” of General Fees and Charges By-law 13-2003, as amended

Delete Columns 2 and 3 of Row 20 of the Planning Application Fees table in Schedule “D” and the headers for Columns 2 and 3 of Row 20 and replace with the following new text shown in red font:

Planning Application Fees	Effective Through June 26, 2023	Effective June 27, 2023
<p>Pre-consultation fee for draft plan of subdivision, draft plan of condominium, official plan amendment, zoning by-law amendment and/or site plan approval applications and telecommunication tower applications</p>	<p>\$1,750 per proposal per meeting that may or may not include multiple application types, for pre-consultation requests submitted prior to the enactment of a Mandatory Consultation By- law.</p> <p>Stage 1 pursuant to a Mandatory Consultation By- law: \$1,750 per development proposal per meeting that may or may not include multiple application types.</p> <p>Stage 2 pursuant to a Mandatory Consultation By- law: \$500 per development proposal per meeting that may or may not include multiple application types.</p> <p>The Stage 2 pre-consultation fee will be discounted from an application fee if a complete application is submitted within 1 year from the Stage 2 pre-consultation meeting for draft plan of subdivision, draft plan of condominium, official plan amendment, zoning by-law amendment and/or site plan approval applications.</p>	<p>Stage 1 pre-consultation: \$1,750 per development proposal that may or may not include multiple application types.</p> <p>Stage 2 pre-consultation – no technical review requested: \$500 per development proposal that may or may not include multiple application types.</p> <p>Stage 2 pre-consultation – technical review requested: 50% of the fee for a draft plan of subdivision, draft plan of condominium, official plan amendment, zoning by-law amendment, site plan approval or telecommunication tower application as outlined in this By-law.</p> <p>The Stage 2 pre-consultation fee will be discounted from an application fee if a complete application is submitted within 1 year from the provision of Stage 2 pre-consultation comments for the draft plan of subdivision, draft plan of condominium, official plan amendment, zoning by-law amendment and/or site plan approval (including Telecommunication Towers) applications.</p>