

Date: 2022-05-15

Subject: **Recommendation Report: Bill 109, More Homes for Everyone Act, 2022**

Secondary Title: **Key Elements and City's Implementation Options**

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Recommendations:

1. **THAT** the report titled **Recommendation Report: Bill 109, More Homes for Everyone Act, 2022(Key Elements and City's Implementation Options)** to the Committee of Council meeting of May 25, 2022, be received;
2. **THAT** Council direct staff to bring forward a final Corporate implementation strategy for Bill 109 matters, including any business process changes;
3. **THAT** a copy of the report be sent as information to the Region of Peel and all relevant external agencies that participate in the City's development applications review process;
4. **THAT** Council advocate to the Province to explore other avenues to help municipalities expedite approvals in an effort to deliver new housing, including ensuring expedited approval timelines by provincial and regional review agencies;
5. **THAT** Council, with respect to the Community Infrastructure and Housing Accelerator (CIHA) tool, advocate to the Province to specify expected norms for public notice periods and public consultation, as well as provide clarity and direction on processing fees and application requirements in the final CIHA guidelines;

6. **THAT** Council direct staff to consult with Infrastructure Ontario for a comprehensive review of possible Transit Oriented Community locations in Brampton and impacts on City's parkland due to Bill 109;
7. **THAT** Council request the Province to consult on any regulations authorizing owners of land, and applicants for approvals in respect of land use planning matters, to stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality; and
8. **THAT** Council direct staff to confirm the City of Brampton's participation in the proposed Province of Ontario Housing Supply Working Group.

Overview:

- **Bill 109 is the first major legislative response to the recommendations of the provincial Housing Affordability Task Force Report.**
- **Bill 109 was introduced on March 30, 2022 and received both third reading and Royal Assent on April 14, 2022, before the commenting period of April 29, 2022 expired.**
- **This report highlights the key elements of Bill 109; including changes to the *Planning Act* and the *Development Charges Act* and possible implications for the City of Brampton.**
- **This report also proposes preliminary options for implementation of key elements of the Bill that may impact City operations, noticeably:**
 - **the mandatory reimbursement of development application fees for non-decisions within prescribed timelines,**
 - **a new Community Infrastructure and Housing Accelerator (CIHA) tool,**
 - **parkland contributions, and**
 - **surety bonds.**
- **Staff are planning a thorough consultation with City Council, external stakeholders and municipalities to prepare a fulsome implementation strategy.**
- **Staff seek direction to bring forward a final Bill 109 implementation strategy for Council approval.**

Background:

On March 30, 2022, the Province introduced [Bill 109: An Act to amend the various statutes with respect to housing, development and various other matters](#). The Bill is considered to be the first step in implementing the recommendations of the Province's Housing Affordability Task Force (HATF) Report. Bill 109 includes targeted statutory changes for the immediate term in an effort to, among other goals, incentivize the timely processing of certain development applications to bring housing to market and increase transparency.

Consultation on various aspects of the Bill was open until April 29, 2022. Municipalities, including Brampton, were preparing to respond to the consultations. However, the legislation was fast-tracked at Queen's Park prior to the closing of the consultation window; and Bill 109 received both third reading and Royal Assent on Thursday April 14, 2022, without any amendments. (See **Appendix 1** for a copy of the Royal Assent for Bill 109.)

Bill 109 makes a number of significant changes to the *Planning Act*, the *Development Charges Act, 1997*, the *City of Toronto Act, 2006*, the *New Home Construction Licensing Act, 2017*, and the *Ontario New Home Warranties Plan Act*.

Many of the HATF's 55 recommendations are not included in Bill 109, and the Province is undertaking further consultation on aspects such as expanding zoning permissions for missing middle housing. A provincial Housing Supply Working Group is being established to engage with municipal and federal governments, partner ministries, industry, and associations. Brampton's Government Relations staff is pursuing avenues to ensure City participation in this group.

Staff Comments on Bill 109

Staff have comprehensively reviewed Bill 109 and analysed possible implications for Brampton. **This staff report includes input from various City divisions, such as Development Services, City Planning and Design, Building, Government Relations, Parks Planning, Legal, Finance, Environment and Development Engineering, Risk Assessment and Banking and Investments.**

Bill 109 is based on the premise that a lack of housing supply has contributed immensely to the housing affordability crisis. The Bill focuses on expediting the approval and supply of market housing.

Development Activity in Brampton

Housing approvals are steady in Brampton but many developments are not proceeding to construction. Development interest is high in Brampton. From 2019 to 2021 subdivision applications increased by 80%, site plan applications 100%, and pre-consultation applications have increased by 130%. There is supply in the pipeline. The City has been diligent about development approval timelines and trying to expedite approvals. Brampton approves around 5000 residential units annually, including second units. However, many projects do not proceed to construction after receiving zoning and site approvals. January, 2022 data indicates that *almost 9,014 approved residential units have not proceeded to construction*. This amounts to considerable amount of land locked in with development approvals issued but where housing is not being built for residents in need.

Development Review Process Improvements

Housing growth and development approval timelines are dependent on many factors. While improvements to the municipal development approvals process are possible, municipalities are concerned about the perception that housing supply will increase

significantly if only municipalities 'move faster'. Housing affordability is a complex issue, and while approval timelines are a part of the solution, all levels of government and private industry have a role to play to improving housing supply.

Brampton appreciates the importance of modernization and improvements to the development approvals process. The City has initiated a number of process improvement initiatives, as listed below, by leveraging technology to track and monitor application processing times and report on volume and type of development applications.

- Implementation of Accela development tracking software, allowing for fully digital submission, circulation and review
- BRAMPlan Online: The City was able to keep our virtual doors open thanks to the self-service online portal 'BramPlan Online'. It allows developers to manage all their Planning and Development applications, obtain real-time status updates and see who is working on their file.
- MOBIINSPECT: Introduction of mobile and remote video inspections.
 - i. Staff completed a record 197,113 building inspections from January 1 to November 19, 2021. (177,292 total for year in 2020 – which was also a record setting year).
- Digitization of Property Records (and on-line requests)
- On-Line applications and digital mark-up solution
- E-mail permit issuance
- On-line inspection requests & e-mail booking confirmation
- Skip the Line (On-Line appointment booking system)
- GeoHub – permit data (real time inspection results)

Staff are undertaking a comprehensive, end-to-end review of all development review processes for further improvement. Provincial funding is being utilized for the following process related initiatives.

Provincial Funding to Support Development Application Streamlining and Modernization

Provincial Audit and Accountability Fund

The City will utilise the fund for the following projects to enhance development application processing times:

- Development Application Review Modernization Project;
- Committee of Adjustment Modernization Project; and
- Urban Design Guidance Modernization Project.

The outcome of each of these projects will be more efficient and effective review processes which will contribute to a more streamlined review process.

Provincial Streamline Development Application Fund

Through this fund, the City received \$1M to advance additional projects that will facilitate greater efficiencies in the development application review process. These funds will be used to support the completion of the Comprehensive Zoning By-law review, identify efficiencies in the detailed engineering review process associated with subdivision development, and other smaller scale efficiency projects.

Key Elements of Bill 109 and Implementation Options for Brampton:

City staff have reviewed the final Bill and analysed the possible impacts to the City’s processes and finances. Staff have also come up with proposed implementation options for key elements of the legislation that are expected to have an impact on City operations.

Staff seek Council direction to proceed with detailed analysis of any or all options presented below for each key element of the Bill and finalise an Implementation Strategy.

1. A new zoning order tool called Community Infrastructure and Housing Accelerator

Bill 109 adds to the Planning Act a new type of Ministerial Zoning Order (“**MZO**”) that can be issued upon request by municipal Council – referred to as the Community Infrastructure and Housing Accelerator (“**CIHA**”). The goal of this tool is to expedite approval processes on key projects. The request can be for the Minister to exercise any municipal Planning Act Section 34 (zoning) power. This tool does not replace the current MZO tool.

Key aspects of MZOs and CIHAs:

	MZO	CIHA
1.	There is no requirement of public notice and consultation by the municipality prior to a request for an MZO from the Minister.	There is a requirement of a public notice and consultation considered appropriate by the municipality prior to a CIHA Order from the Minister.
2.	The Minister can grant an MZO as requested or one with modifications and conditions.	The Minister can grant a CIHA Order as requested or one with modifications and conditions.
3.	MZOs do not need to be compliant with any provincial policy statements or municipal OPs and are not subject to Tribunal appeal.	CIHA Orders do not need to be compliant with any provincial policy statements or municipal OPs and are not subject to Tribunal appeal. Additionally, this exemption can extend to subsequent approvals required to realize a use recognized by the Order (e.g. the subsequent subdivision and site plans), after adequate “mitigation” of any potential adverse impacts.

4.	No guidelines on the issuing process for MZOs	CIHA Orders can only be requested by municipal Councils with the Minister having to follow “guidelines” on the issuing process.
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Types of Development Eligible for CIHA

CIHA Orders can be made for the following priority developments:

- community infrastructure that is subject to Planning Act approval including: lands, buildings, and structures that support the quality of life for people and communities by providing public services for matters such as health, long-term care;
- housing, affordable housing and market-based housing;
- buildings that would facilitate employment and economic development; and
- mixed-use developments.

Staff Comments

The CIHA would formalize requirements by which a municipality may request that the Province exercise the Minister's zoning order powers under the Planning Act. If utilized for municipal priority projects, the tool could speed up approvals for affordable housing and community infrastructure, while increasing transparency (given the required public notice and consultation) that is absent in the use of MZOs.

Under this order, the Minister can provide an exemption for other necessary planning-related approvals, including subsequent approvals, from provincial plans, the Provincial Policy Statement, and municipal official plans (if specifically requested by the municipality), and that the Minister may impose conditions on the municipality and/or the proponent.

It is unclear how the tool will address zoning matters, but “will not address environmental assessment matters related to infrastructure.” We would request that the Province provide additional details with respect to environmental approvals through the CIHA process.

The CIHA can only be used after final CIHA Guidelines have been published. The Province released draft **CIHA Guidelines (Appendix 2)** for consultation, and the commenting window closed on April 29, 2022. The Planning, Building and Economic Development Department submitted comments (**Appendix 3**) and proposed the following clarifications and additions:

- Expected norms for public notice periods and public consultation be included;
- Exemptions from provincial policy statements or municipal OPs be limited to developments that are of an emergency measure, and that development remain consistent with and/or in conformity with provincial policies and legislation;
- Qualification be provided for benefiting market housing that includes a provision of affordable units;

- For types of eligible developments, further clarity be provided for “any type of housing” as “any type of housing except housing on lands designated as Employment Lands, including land located within Provincially Significant Employment Zones”;
- Detailed guidance be provided on the applicability of each tool (MZO and CIHA) to avoid the simultaneous application of both tools; and
- Guidance or clarity be provided on municipalities’ ability to establish and require CIHA processing fees.

Next Steps

Staff recommend the following be explored in further detail in order to effectively utilise the CIHA tool in Brampton.

a) Public Notice and Consultation

The City will be required to establish a public consultation process for the newly proposed tool. The final CIHA Guidelines are expected to reflect comments received during the consultation period for the Province’s draft CIHA guidelines. Staff await the final guidelines, however, in case the guidelines do not provide further clarity on consultation, staff recommend that a similar and simplified process for public notice and consultation be considered for CIHAs in the future Bill 109 Implementation Strategy as the one that is currently in place for a regular rezoning application.

b) CIHA Review Fees

Staff anticipate uptake of this new tool by the development industry and recommend collection of development application review fees for CIHA applications. Recently, staff brought forward a report to Planning and Development Committee on fee standards. The CIHA is expected to result in expedited review timelines and there will be corresponding impact on staff and financial resources across the corporation, since multiple departments are involved in the review of development applications. Staff will complete an assessment of such additional resources that may be required and fees that may offset these additional resource requirements for CIHAs.

c) CIHA Application Submission Requirements

Staff recommend clarity around submission material for evaluating a CIHA proposal. The in-effect application requirements for development review could apply to all CIHA applications, and additional information could also be required in order to complete expedited reviews.

2. Gradual mandatory refunds for development application fees for Zoning By-law Amendment (“ZBA”) and Site Plan (“SP”) applications for non-decision within timelines

New additions to the Planning Act will require municipalities to refund up to 100% of development application fees paid for the following application types if it has not rendered a decision on (ZBA, ZBA+OPA) or approved (SP) within the following periods:

Fee Refund Amount:	If No Decision on ZBA Within:	If No Decision on ZBA+OPA Within:	If SP Not Approved Within:
50%	90 days	120 days	60 days
75%	150 days	180 days	90 days
100%	210 days	240 days	120 days

The time windows triggering the initial 50% refund are tied to the standard review period after which applicants gain a right to appeal to the Tribunal for non-decision. As part of these Bill 109 additions, the current standard review period for site plans is being extended to 60 days from 30 days.

It should be noted that the changes mandate that the City must approve a SP or be required to refund the application fee. This differs from the new refund provisions for ZBAs whereby a decision (approval or refusal) is needed or fees are required to be refunded.

Implementation of this gradual refund regime will apply to applications received on or after January 1, 2023. The Province aims to use this regime to incentivize municipalities to make timely decisions.

Staff Comments

The City shares the goal of reducing approval times for development applications and is actively taking steps to do so. Brampton has made significant improvements to the development review process for applicants, staff, partners and the public as identified previously in this report and is committed to continuing to do so.

Collaborative approach

Staff take a collaborative approach in reviewing applications - working with applicants and stakeholders to find mutually agreeable solutions in a timely manner, so that developments can be approved once deemed acceptable,. Requiring refunds with the noted timelines will not accommodate the opportunity to have the necessary dialogue with applicants to bring their development proposals and supporting studies into conformity with City policies and standards to the point where they can be supported.

To meet the timelines, the City would likely need to make decisions on applications as they are submitted without being able to work with the applicant or stakeholders on changes. This may result in a large increase in instances where the City is refusing applications. The anticipated reaction from the applicant is that they would likely appeal these decisions with the result that the applications would be handled through Ontario Land Tribunal (“OLT”) processes, which are typically slower than City approval processes. In addition, the

increased number of refusals will create additional workload for the OLT creating a risk that the development approval process overall slows down substantially.

External factors affecting review timelines

Many of the factors affecting timelines lie outside the control of the City. The development review process is typically an iterative process where the C provides comments and the applicant responds with changes to their development. The time that an applicant takes to respond to staff comments plays a large role in the overall approval timelines. The review process also involves other agencies, such as regional governments, conservation authorities, utilities and school boards, and their timelines significantly affect approval timelines.

Applications and the associated studies and materials received by the City are often incorrect and incomplete, with the studies submitted not expressly following the City’s posted Terms of Reference. This results in the need for application resubmissions, which then result in processing timelines that exceed the timelines noted before refunds are required.

To avoid issuing refunds to development application fees, municipalities may decide to render decisions solely on whether the initial submissions are acceptable for approvals, which would likely result in more refusal appeals to the OLT. It would also likely result in a much more rigorous “Completeness” review to ensure applications are fully accurate and appropriate prior to agreeing to “start the clock”.

Fees and cost recovery

Staff have compiled details on the 2021 development applications that would apply to these mandatory refund rules to inform us about the potential financial impacts that would be experienced.

As noted in the chart below, the vast majority of the 2021 development applications that would be subject to these rules had been processed with time periods exceeding the new mandatory refund timelines. For this reason, staff would have been required to refund all or part of the application fees to the applicants.

Application Type	No Refund	50% Refund	75% Refund	100% Refund	Total Amount Refunded	Amount Retained by City*	Total Fees Collected By City
Approved OPA/ZBA	\$0.00	\$6,269.50	\$38,298.00	\$48,344.00	\$92,911.50	\$19,035.50	\$111,947.00
Currently In Review ZBA	\$0.00	\$0.00	\$206,757.12	\$364,223.60	\$570,980.72	\$68,919.04	\$639,899.76
Currently In Review OPA/ZBA	\$0.00	\$135,719.22	\$181,897.06	\$1,020,497.07	\$1,338,113.34	\$212,199.07	\$1,550,312.41
Approved Site Plans	\$0.00	\$1,722.00	\$1,237.50	\$169,047.00	\$172,006.50	\$2,152.50	\$174,159.00
Currently In Review Site Plans	\$0.00	\$0.00	\$0.00	\$2,945,131.89	\$2,945,131.89	\$0.00	\$2,945,131.89
TOTAL (\$)	\$0.00	\$143,710.72	\$428,189.68	\$4,547,243.56	\$5,119,143.95	\$302,306.11	\$5,421,450.06

* Amount based on days surpassed as of May 12th, 2022. Amount retained subject to decrease.

The new mandatory refund rules could result in a significant loss of revenue, if we are not able to incorporate new strategies to be able to have Council render decisions within the required timelines. Any loss in revenue would need to be made up for from the general tax base. At present a significant portion of the true costs of the processing of development applications are covered by the City's tax base, as our studies have shown that the development application fees cover only approximately half of the total costs. Due to the introduction of mandated reimbursements - it is anticipated that the City would substantially increase development application fees to cover the true costs of development application processing. It is anticipated that many municipalities are currently not fully recovering their full costs through fees, and would pivot in this manner in response to the proposed legislation.

Next Steps

Staff propose the following preliminary options for process changes that could be reviewed in further detail:

a) A more robust development pre-application process

Currently the City's requirements for a development pre-application are not extensive. The City reviews the application and provides commentary on requirements for a future complete application and only reviews studies on a cursory basis to determine whether some elements of important information is provided. The pre-application process does not include a full review of studies to confirm accuracy or conformity with all requirements and standards, and is not circulated to external review agencies such as the Region of Peel, TRCA and provincial ministries such as Ministry of Transportation. The subsequent review of the complete/full application includes detailed reviews by these agencies, and usually requires multiple resubmissions, which extends overall review timelines.

A pre-application review is not considered to be part of the formal legislated application review. To improve process efficiencies and manage the legislated review timelines after deeming an application complete, staff recommend strengthening the pre-application process. Staff has already used enhanced pre-consultation processes effectively for certain strategic development projects, such as the Shoppers World redevelopment, that included working with the applicant to co-design the project to ensure the project achieves the objectives of the City and other stakeholders as well as those of the applicant. Doing this work at the outset for more projects will make for an overall better and quicker approval process. Staff propose requiring the more detailed, additional material to review the application in more depth. Staff also recommend that the pre-application process include a review by all external agencies so that high level technical issues are addressed and concerns are mitigated and that the applicant can make necessary changes to the submission prior to making a subsequent submission that would be deemed Complete by the City.

b) Upfront non-statutory public consultation prior to a complete application submission

Currently, a Pre-application is not shared with the public. The public and adjacent residents come to know of a proposed development in their neighborhood when the City receives a Complete application and sends out the mandatory public notice regarding application being Complete, and also of the subsequent statutory public meeting. The notice regarding Completeness is available through the Brampton Guardian, and the notice regarding statutory public meeting is available to the residents in the Guardian, as well as through mail (240 meters radius from the subject property).. This often results in residents bringing first thoughts and concerns to the public meeting, leading to both staff and the applicant spending a considerable amount of time addressing the concerns through subsequent resubmissions.

To avoid this delay, staff recommend implementation of Housing Brampton's Recommendation 9.1.2 Non-statutory neighborhood meetings led by proponents of development applications. These meetings can be held prior to the statutory public meeting process and can provide the opportunity to:

- Inform the public of an upcoming project, educate them about the planning process and their role in these meetings and decision-making process;
- Engage public in an informal setting and flag key concerns and/or issues and share ideas.

Some municipalities in Ontario include mandatory non-statutory public meetings as part of their planning process. For example, in Burlington, Toronto, and Kitchener, meetings are held prior to the statutory public meeting for Official Plan / Zoning By-law and Plan of Subdivision applications. In some instances, the cities directly inform the residents at the pre-application stage. These non-statutory meetings are not part of the Planning Act; thus each municipality has their own protocol, standards for public notice, presentation, and public feedback. Meetings are usually held in an open house format and are initiated by the applicant. Planning staff and the Ward Councillor are typically in attendance to receive input and respond to any queries. The venues for these meetings are typically in close proximity to the subject sites. In the City of Brampton, Councillors have occasionally and successfully initiated early public engagement to dispel public concerns around affordable or high density development applications.

Staff can modify the development review process requirements and establish a protocol for non-statutory neighborhood meetings led by applicants to reduce review timelines of complete applications.

c) Enhanced requirements for Complete applications

A challenge experienced by staff in the approval process has been the quality of submitted documents. Currently the City has a complete application checklist which provides guidance to the type of studies and plans that must be submitted with a full application. The studies are required to follow corresponding terms of reference, where available. Staff across all departments may now need to review these terms of reference in order to determine if additional details should be required in order to reduce review

timelines and resubmissions. Moreover, greater certainty about the quality and completeness of the applications submitted can be had by requiring Planning Justification Reports be signed off by a Registered Professional Planner (RPP) prior to submission – whereas this is not a current requirement. The RPP would use professional judgement to attest to the Completeness of the submissions to avoid delays in the approvals processes. This considerably impacts approval decisions arriving within prescribed deadlines. Staff are of the opinion that all of these measures, in conjunction with a more robust pre-application process and upfront non-statutory public consultation, will lead to more robust applications and improve overall review timelines.

d) Improve processes for more efficiency

Staff have continuously looked to make the development review process as efficient as possible. However, there may be opportunities for further improvements and staff will search for any opportunities to do so. One example could be the elimination the requirement for applicants to prepare Homebuyers Information Map for new residential developments. These maps advise homebuyers of information related to their development at the time they are purchasing it. While they provide some benefit, they are not a statutory requirement and require significant staff time to prepare. Eliminating them could help improve review timelines.

e) Reduced use of concurrent submissions for the same development

Currently the City allows concurrent applications to be submitted and reviewed for the same development application. For example, a ZBA and OPA; a ZBA and Subdivision (SB) or a ZBA and SP are processed simultaneously to support overall review. In the case of timelines, staff have observed that OPAs or SBs take longer to review than ZBAs, due to the complexity of reviews and clearances of conditions. In order to meet Bill 109 and Planning Act requirements, staff recommend de-linking concurrent application reviews and evaluation of each application separately and in an established sequence.

f) Expanded use of “Holding (H)” provisions for ZBAs

“Holding (H)” provisions enable zoning by-law amendments to be endorsed with conditions attached. The conditions may be related to completion of technical studies, receiving clearances from external agencies, etc. The zoned land use permissions are not in effect until the conditions are cleared by staff, and the Holding (H) is removed through the passing of a By-law to “lift” the Holding symbol. This lengthens the overall duration of receiving full and final zoning approvals, however it can support the applicant in proceeding to the next stage of application process. In case of Bill 109, use of Holding provisions can support the City in meeting the legislated timelines and avoid mandatory reimbursements.

g) Increased application fees

Expedited reviews will impact the City's budget and resources. Staff complement may need to be increased to meet the aggressive timelines. Further, any reimbursement of fees due to delays, mostly beyond the City's control, eg. discrepancy between the City's and external agencies' review timelines, will need to be compensated from tax reserves. Any resulting litigation due to delays, reimbursements and refusals will further impact the City finances. To counteract this, staff recommend an exploration of corresponding increase in development application fees and changes to the structure for how fees are collected. A detailed analysis will be required in order to arrive at the extent of the increase, and staff can bring a report forward with this information.

h) Exploration of a "stop the clock" mechanism

Due to the complexity of applications, applicants often take a long time to respond to staff comments and resubmit revised documentation for review. In addition, there are periods of time when Council is not able to hear matters including during election years and other breaks in Council decision making. Staff recommend a review of legislated authority or private legal agreements between the City and applicants to "stop the clock" whereby review timelines could be paused during times when the submission is with the applicant for revisions, as well as when Council is unable to take decisions.

All municipalities will face similar challenges with the proposed refund requirements. Staff will consult with other municipalities to identify best practices for responding to the refund requirements. Further options may arise from that review and staff's continued work on this issue.

3. Amendments to subdivision control

The Province can now prohibit certain matters from being the subject of conditions of draft plan approval. The Province can also establish a one-time discretionary authority to reinstate draft plans of subdivision that have lapsed within the past five years, subject to consumer protection provisions. This is meant to streamline subdivision approval processes and provide more certainty and transparency.

The Planning Act limits municipal authority to impose subdivision approval conditions to those that are "reasonable, having regard to the nature of the development proposed for the subdivision". Bill 109 adds Ministerial authority to pass regulations on "prescribed matters" that cannot be imposed as subdivision conditions.

In addition, municipalities will be able to grant a one-time reinstatement of a draft plan of subdivision for which the approval has expired within the past five years. Such reinstatement would require the subject lands not to have already been pre-sold according to the expired plan. Presently, Planning Act extensions to the approval time for meeting subdivision conditions can only be given before that approval time lapses. The Province believes these changes will help expedite new subdivision approvals.

Staff Comments

The Province offers no clarity on the type of conditions that could be prohibited for subdivision approvals. In a complex built-up area such as Brampton, conditions need to address challenges with encroachments, easements, areas with combined sewers and infill development and ensuring drainage in specific circumstances. Each approval includes a number of technical, legal and financial conditions associated with the subdivision registration, which if prohibited, could hamper the health and safety of future residents, or the fiscal health of the municipality if it cannot collect development related charges. Growth staging and sequencing, as well as cost sharing between landowners, and the City or land owners front ending the infrastructure costs are complex financial correlations, which if impacted, could cause developers to back out of infrastructure dedications and cost sharing.

Staff are generally comfortable with the provision on reinstatement of expired approved draft plans of subdivision.

Next Steps

Without the ability to know which type of conditions the Province would like to prohibit, the City cannot prepare an implementation strategy. Staff recommend a dialogue with the Province to obtain more clarity. Moreover, staff recommend a detailed review of general and commonly anticipated subdivision conditions to understand possible impacts, both financial and non-financial.

4. Ability to define required site plan documentation and delegation of approvals

Through Bill 109 a number of amendments have been made to Section 41 of the Planning Act regarding Site Plan Control. The changes include rules respecting pre-application consultations, complete applications, delegated approval authority and refunding of fees.

Under Bill 109, the Province is given regulatory authority to prescribe required documents that must be submitted for site plan approval on applications received after Bill 109 receives Royal Assent. The Province believes this will streamline site plan requirements and approval processes and help municipalities make decisions within realistic timelines.

Moreover, municipalities can require “any other information” if the OP considers it necessary. There is a Tribunal appeal mechanism for when municipalities fail to determine whether an application is complete within 30 days and to settle disagreements over completeness. In practice, this updated regime will mirror what is currently in place for OPA and ZBA applications.

Additionally, the Planning Act would require Council to appoint an “officer, employee or agent” to approve site plans. This change expressly removes the power of Council to approve site plans and transfers it all to the delegate. This mandatory delegation will only apply to site plans submitted on or after July 1, 2022. The Province believes these measures will streamline the development approval process.

Staff Comments

Staff support this new authority to assign a delegate that Council deems appropriate for SP approvals. In Brampton, SP approval is already delegated to staff.

Next Steps

The City will need to establish complete application requirements for site plan applications, similar to the existing rules for OPAs and ZBA applications.

5. Regulatory power on acceptable collateral to secure development obligations

The Minister can pass regulations on allowing surety bonds and “other [security] instruments” that developers can use to secure obligations imposed by municipalities as a development application approval term. The Province wants to promote the use of sureties and other securities that can free up money for homebuilders to pursue additional construction projects.

Staff Comments

When the City enters into certain types of development agreements, such as subdivision and site plan agreements, the City requires the landowner to post securities to guarantee that the works to be undertaken will be done in accordance with the approved plans and per the conditions of the agreement. In the instance where the developer does not undertake the appropriate works, or installs insufficient works, the municipality will utilize the securities to undertake the works to City standards. The most common tool utilized for development securities are Letters of Credit issued by financial institutions.

A Letter of Credit acts as a line of credit to a developer. The debt is applied in full as an assurance should the bank need to provide the funds to a municipality. As such, the amount of the Letter of Credit can reduce the ability of developers to finance numerous projects. Municipalities prefer Letters of Credit because the issuing financial institution has committed to advancing the funds to the City, should the other party default on their responsibilities.

A surety bond is a guarantee by a third party (often an insurance company) to assume a defaulting party’s obligations. Surety bonds do not have the same carrying costs or financial burden as a Letter of Credit and as such, are more attractive to developers. However, the burden to a municipality in attempting to access a surety bond is resource intensive, requiring substantial legal intervention and the result may not guarantee that the municipality will receive the full amount secured against the works. Extensive effort is required by the municipality to demonstrate absolute failure to deliver by the landowner or private-corporation. Failed attempts to resolve the matter must then be demonstrated followed by extensive time and financial resources incurred by the City to explore all options for mediation. External legal expertise is required to work through the legalities of claiming sureties.

The surety's liability to pay or perform only exists to the extent of the default and actual damages sustained. The surety has a more active role as compared to the issuer of a Letter of Credit, where the obligation to pay arises on demand, rather than on default. Furthermore, the surety has options on how to respond in the event of a default. Recent efforts to claim surety bonds on municipal projects as a result of failure to comply with contractual terms is reminiscent of the challenges the City would face with successfully pulling surety resources from bonds.

Bill 109 provides that the Minister may make regulations authorizing landowners and applicants to choose the type of security they provide.

Staff reiterate that a letter of credit provides the best mechanism to ensure that the municipality will receive its funds if a developer defaults in performing its obligations. The City of Brampton will be assuming a high level of financial risk and potential exposure with this provincial direction.

Next Steps

Staff recommend that Council request the Province to consult on any regulations authorizing owners of land, and applicants for approvals in respect of land use planning matters, to stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality.

Staff will also undertake a comprehensive risk assessment and formulate a response for Council consideration. Preliminary options include investigating the forms of acceptable bonds, such as demand bonds; and requesting the same from applicants.

6. Amendments relative to parkland dedication

The Bill establishes an alternative parkland dedication rate for Transit-Oriented Communities (TOCs) to provide increased certainty of parkland requirements:

- For sites less than or equal to five hectares, parkland would be dedicated up to 10% of the land or its value
- For sites greater than five hectares, parkland would be dedicated up to 15% of the land or its value

In addition, the legislation also provides the Province with the ability to declare land in a TOC that has easements or below-grade infrastructure as being "encumbered", with the effect that the land must be conveyed for parkland, with full credit for parkland dedication.

Staff Comments

Staff require clarity around the definition and applicability of TOCs in Brampton. According to the Transit-Oriented Communities Act, 2020:

- A “transit-oriented community project” means a development project of any nature or kind and for any usage in connection with the construction or operation of a station that is part of a priority transit project, and includes a development project located on transit corridor land within the meaning of the Building Transit Faster Act, 2020.
- Priority transit projects only refer to Toronto based projects, including the Ontario Line, Scarborough and Yonge Subway Extension and Eglinton Crosstown extension) and any other provincial transit project prescribed by the regulations.

Based on the above, clarification is needed to see which areas in Brampton are actually considered TOC's. Definitions are broad, and may include any higher density, mixed-use development that is connected, next to, or within a short walk of transit stations and stops. Depending on the ultimate number of lands designated as TOC sites, there are variable impacts on potential parkland dedication.

Accepting encumbered land will limit the City's ability to provide adequate amenities and services to residents. Currently, encumbered parkland is valued significantly less than unencumbered lands. Service level targets will be impacted if lands are impeded by other uses and associated easement requirements.

In absence of a clear definition of what a TOC is, Brampton currently has no confirmed TOCs and it intends to continue to use the alternative residential rate to calculate parkland dedication. In case a TOC is identified, dedication caps in the area would create a shortage in land area and/or payment-in-lieu to meet parkland demand in these high-density communities and City-wide overall. Staff are currently looking into encumbered land in the City's upcoming new Parkland Dedication By-law. The Minister of Infrastructure's authority to identify encumbered land in TOCs as satisfying the parkland dedication requirement for a development or redevelopment is a concern for the City. The resulting effect of this new authority will force the City to accept parkland inconsistent with those recognized in the Official Plan, Parkland Dedication By-law and Parks and Recreation Master Plan throughout a TOC.

Staff Recommendation

In order to mitigate against this scenario staff recommend advocacy and outreach, and that the Minister of Infrastructure account for local parkland dedication requirements and consult with the municipality before exercising that authority. Effectively, a cap has been introduced to limit the City's ability to secure an appropriate amount of land/CIL.

This should be followed by a detailed analysis of the possibly significant impacts for parkland if the City is to accept encumbered land and limits on the alternative rate.

7. Minister review of Official Plans and amendments

Bill 109 provides the Minister of Municipal Affairs and Housing with new discretionary authorities when making decisions to:

- "Stop the clock" if more time is needed to decide on all official plan matters subject to Minister's approval (with transition for matters that are currently before the Minister)
- Refer all or part(s) of an official plan matter to the Ontario Land Tribunal for a recommendation, and
- Forward all of an official plan matter to the Ontario Land Tribunal to make a decision.

Staff Comments

The Region of Peel approves Brampton's OP, so Brampton is not directly affected by this legislation. But Brampton's OP must conform to the Region's OP. If the Region's OP is not approved by the Minister or is delayed, there is a cascading effect on Brampton's timelines for its OP approval, as well as related policy initiatives such as the Zoning By-law and Inclusionary Zoning.

8. Mandatory 5 year reviews of Community Benefits Charges by-laws

Bill 109 requires municipalities with a Community Benefits Charge ("**CBC**") by-law to undertake and complete a review, including consulting publicly, on their by-law at least once every five years. If the review is not completed within the relevant time period, the by-law shall be deemed to have expired. The Province believes these changes would increase transparency and public engagement.

Staff Comments

Brampton is currently undertaking the CBC strategy and by-law work. Staff consider periodic reviews of the CBC by-law to be of no concern. A new requirement to review charges every five years (with public consultation) is consistent with existing development charge by-law reviews. It represents an added administrative cost and process for the municipality to undertake, which staff will factor in as the new CBC strategy and by-law are being prepared.

9. Development Charges Act changes

- a) The Bill mandates treasurers' statements to be made available to the public on a municipality's website, or in the municipality's office if no such website is available, and in any manner as may be prescribed in the future. This is meant to enhance transparency of development charges (DCs) by improving municipal reporting requirements.

Staff Comments

City of Brampton Finance staff are in agreement with the proposal as they concur with increased transparency and reporting of development charges to the public. The Treasurer's Statement is already made public on an annual basis, however staff will endeavor to create a dedicated webpage on the City's website to make the Treasurer's Statement easier to search and find for the public.

- b) Regulatory changes require a municipal treasurer, in their annual treasurer's statement, to set out whether the municipality still anticipates incurring the capital costs projected in the municipality's DC background study for a given service. If not, an estimate of the anticipated variance from that projection would be provided along with an explanation for it. The proposed regulatory amendments would amend existing reporting requirements to require publication of additional information that municipalities would likely already have available.

Staff Comments

Staff are generally in agreement with the proposal and concur with increased transparency and reporting of development charges to the public. With respect to the requirement to account for any variance based on whether the City is spending on the capital costs project over the DC By-law period, it should be noted that there is inconsistency with this statement given the DC by-law period is five years, and the planning horizon for soft services is ten years and to Official Plan build-out for hard services. Municipalities collect for "big ticket items" (e.g. recreation centres, wastewater treatment plants) for longer than the DC by-law period, so it would be very challenging and unreasonable for Brampton to spend the DCs collected over a five-year period on such big ticket items.

Corporate Implications:

Financial Implications:

There are potential financial implications as a result of Bill 109, which include additional resource requirements and lost revenue, however, these impacts cannot be quantified at this time. Staff will continue to review, monitor and advise Council on the financial implications of Bill 109, as part of a future report to Council.

Other Implications:

Bill 109 includes changes that have implications for the Region, in terms of the Regional Official Plan approval timelines. City Staff will work closely with the Region to monitor implications.

Term of Council Priorities:

This report directly aligns with the Council Priority to Create Complete Communities and 'Brampton is a Well Run City'.

Conclusion:

Bill 109 makes a number of substantial changes to the Planning Act, the Development Charges Act, 1997, the City of Toronto Act, 2006, the New Home Construction Licensing Act, 2017, and the Ontario New Home Warranties Plan Act. This report analyses the key elements of the Bill under the Planning Act and the Development Charges Act, 1997. The Bill necessitates significant changes to the City of Brampton's business processes

pertaining to development review, parkland contribution and Development Charges, among others. Staff will continue to analyze financial and other impacts, consult with Council and other municipalities and bring forward a detailed implementation strategy for Council endorsement.

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Attachments:

Appendix 1 Bill 109 Royal Assent

Appendix 2 Community Infrastructure and Housing Accelerator – Initial Proposed Guideline dated March 30, 2022

Appendix 3 City of Brampton comments on the Community Infrastructure and Housing Accelerator – Proposed Guideline