

December 9, 2022

**Mayor Patrick Brown and Members of Council**

City of Brampton  
2 Wellington St W.  
Brampton, ON  
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Sent via email to [cityclerksoffice@brampton.ca](mailto:cityclerksoffice@brampton.ca)

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

*Recommendation Report - City-Initiated Amendment to the Official Plan - Response to Bill 109, City-wide*

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The Building Industry and Land Development Association (BILD) is in receipt of staff report entitled *Recommendation Report - City-Initiated Amendment to the Official Plan - Response to Bill 109, City-wide*, November 28, 2022. We are submitting this information and deferral request in advance of City Council's receipt of the staff report on December 12<sup>th</sup>.

To begin, we would like to take this opportunity to thank staff for sitting with BILD in November to go over our initial concerns with the City's approach to the OPA for Bill 109, as well as to introduce us to the proposed fee increases scheduled for January 1, 2023. We acknowledge that a few of our concerns regarding the OPA were heard, and that the Fee Review was deferred for further review into the New Year.

At the time of our meeting, the scheduled implementation by the province for Bill 109 was January 1, 2023. Since this meeting, the Province has deferred the implementation date for municipalities to July 1, 2023 to allow more time for review. Due to these 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 this 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 5<sup>th</sup>, 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.

On behalf of our Peel 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 all 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 Brampton's Approach**

As identified in the aforementioned staff report, and something that has been explored by some municipalities is the 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.

Regarding any additional public engagement, BILD agrees that public engagement is critical to the development review and approval process. Many of our members across the GTA already conduct early consultation and feedback prior to the submission of a formal application. However, any extra-statutory pre-application consultation must remain voluntary, as a municipality cannot use this process as a means to prevent the lawful submission of an application and the commencement of applicable review periods under *the Planning Act*. BILD agrees with staff's recommendation of keeping additional public engagement voluntary.

With respect to these themes, 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**

#### *Pre-Consultation Application Transition Policy*

BILD does not support the City's transition policy as written, and believe our request for a deferral to July 1, 2023 is appropriate as staff do not yet have a standard operating procedure

to guide the proposed two-stage Pre-Consultation work. Adopting these measures before the standards of operations are created is premature and will lead to avoidable problems in future.

### *Concurrent Applications*

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.

### **Final Sentiments**

As an industry, we would like to move forward with all our municipal partners to create a 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.

Understanding that this is a seismic shift in process, it will take some time to identify best practices and create efficiencies. Some initial thoughts in this regard are to pre-qualify consultants such that there would only need to be cursory review of submitted materials and limiting council override on professional recommendations.

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. We trust that you will take them into careful consideration and we look forward to the outcome of this work.

Kind regards,



**Victoria Mortelliti, MCIP, RPP**  
Manager, Policy & Advocacy

CC: Gavin Bailey, BILD Peel Chapter Chair  
Allan Parsons, City of Brampton  
Paula Tenuta, SVP, BILD  
Danielle Binder, Director, BILD  
Members of the BILD Peel Chapter

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*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

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Dear Ms. Binder,

**Re: Bill 109 Implementation and the Pre-Application Process**

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 positioned above the typed name.

Signe Leisk  
Partner

SL/AP