

December 13, 2022

Mayor John Tory and members of Council
Toronto City Hall
100 Queen Street W.
Toronto, ON
M5H 2N2

Sent via email to councilmeetings@toronto.ca

**RE: Item EX 1.4 Implementing Bill 109, the More Homes for Everyone Act, 2022
Council Meeting of December 14, 2022**

The Building Industry and Land Development Association (BILD) is in receipt of the staff report 'Implementing Bill 109, the More Homes for Everyone Act, 2022' which was prepared in response to the Province's new legislation, and is being considered by Toronto City Council on December 14th. On behalf of our BILD Toronto Chapter members, we appreciate the opportunity to provide the following comments regarding this staff report and its recommendations to Council.

While the staff reporting is a thorough review of the City's implementation of Bill 109 aspects and includes twelve (12) recommendations, we will only be commenting on the first three (3) recommendations and providing you with some general sentiment on a pattern we have observed amongst GTA municipalities in implementing Bill 109.

Recommendation 1: Through this reporting, we acknowledge that final approval is being sought for staff to prepare an Official Plan Amendment to address policy changes required as a result of the impacts of Bill 109 in a report to Planning and Housing Committee in the first quarter of 2023. We look forward to the release of this information and kindly request stakeholder consultation for the draft OPA.

Recommendation 2: This recommendation asks the Province to consult with the City on regulations associated with Bill 109, specifically related to a "stop the clock" mechanism and other implementation tools. BILD and our members recognize the pressure that this amendment creates for all municipalities to uphold the legislative timelines. 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 legislation, both the industry and the municipalities have a collective interest to meet the timelines, as developers' projects, and proformas are based on municipal timelines as well, and any delay in the approval process can result in additional carrying costs, and violations associated to purchase and sale agreements. The next section of this correspondence will address our thoughts and findings regarding the timelines in detail.

Recommendation 3: We note that staff requested the Minister of Municipal Affairs and Housing to delay implementation of Refund of Fees for Official Plan Amendment, Zoning By-law Amendment and Site Plan Control applications by changing the effective date from January 1, 2023 to July 1, 2023. The province has since expressed a commitment to do so and not to require refunds in the meantime, based on a letter from the Minister to the Mayor dated November 30, 2022. This delay will allow more time to appropriately implement the policies and processes needed for Bill 109 implementation. BILD requests that any mandatory pre-application consultation policy and process changes as it relates to Bill 109 be deferred to the July 1, 2023 implementation date to allow for further consideration and alignment.

In response to Bill 109, a pattern that we have observed by the majority of GTA municipalities is an approach to frontload substantive issues in the project proposal and gating or guarding an application submission –so as not to stamp it complete or accepted – until a more extensive pre-application process has concluded. This means that the ‘clock’ on the legislative timelines would start much later.

With respect to this matter, please find the enclosed correspondence from Cassels regarding the municipal implementation of Bill 109 on the topics of pre-application, complete application requirements and other general themes.

As noted in the report, the City’s mandatory pre-application consultation is scheduled to come into effect on April 3, 2023. We want to ensure that this new mandatory process does not create undue work outside of the legislative timeframes. BILD and its members agree with Cassel’s legal opinion and we believe that parsing out large segments of the development application process before allowing the ‘clock’ to start on the legislative timelines or utilizing a “stop the clock” mechanism is not in keeping with the spirit and intent of the legislation. These practices effectively remove the segments of the process that may take the majority of the time to address in a typical development application.

Through our Municipal Benchmarking Study, 2nd Edition (September 2021), BILD published research associated to approval timelines and this reporting is routinely shared with municipalities and the provincial governments. This research demonstrates that approval times have increased for most municipalities (including the City of Toronto), and for all application types. Overall, average timelines have increased by 41% since the 2020 Study, and between 27-53% depending on application type. Additionally, the time spent in the approvals process has significant implications for building costs. Each month period of delay is estimated to result in \$2.60 to \$3.30 per square foot in additional construction costs at a time when construction cost escalation continues to accelerate.

As an industry, we want to continue to work with you – our community building partners – to develop a transparent and cooperative development application process ensuring that approvals are undertaken in an efficient manner. We hope this 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.

Kind regards,

A handwritten signature in blue ink, appearing to read "Danielle Binder".

Danielle Binder RPP, MCIP
Director, Policy & Advocacy

CC: Will Johnston Interim Deputy City Manager, Infrastructure and Development Services
Gregg Lintern, MCIP RPP, Chief Planner and Executive Director, City Planning
Fahim Kaderdina, Chief of Staff, City Manager’s Office
BILD Toronto Chapter Members



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: 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