



Town of Erin

Corporate Report

Department: Community Services	Report Number: PD2022-17
Business Unit: Planning & Development	Meeting Date: 6/30/2022
Presented/ Prepared By: Jack Krubnik, Director of Planning & Development	

Subject

FINAL RECOMMENDATION REPORT for Town-Initiated Official Plan Amendment to establish a mandatory pre-consultation process and submission requirements for *Planning Act* applications, and have each *Planning Act* application submitted and processed individually, and to not combine them or process them concurrently

Recommendation

Be it resolved that Council hereby receive report number PD2022-17 “*Town-Initiated Official Plan Amendment to establish a mandatory pre-consultation process and submission requirements for Planning Act applications, and have each Planning Act application submitted and processed individually, and to not combine them or process them concurrently*” for information;

And that Council adopt Official Plan Amendment No.14 as outlined in Appendix A to Report PD2022-17;

And that Council direct that Official Plan Amendment No.14 be submitted to the County of Wellington for approval, in accordance with the Planning Act.

Highlights

Staff are recommending the Town of Erin Official Plan be amended, in response to the More Homes for Everyone Act, 2022, S.O. 2022, c.12 – Bill 109. This Act amends the various statutes with respect to housing, development and various other matters. The proposed Official Plan Amendment No.14 addresses a number of specific components of the Act as they relate to the refund of application fees, the timing for review, and the processing of development applications. The proposed amendment aims to ensure that applicants provide a comprehensive initial planning application submission, to assist Staff in the processing of planning applications in a timely fashion, and to enable Council to provide a decision within the new statutory timelines. The proposed Official Plan Amendment No.14 policies will assist in reducing the occurrence of application fee refunds, which are now tied to the statutory timelines for application decisions.

Background

On March 30, 2022, the Province introduced the More Homes for Everyone Act, 2022 (“Bill 109”) which received Royal Assent on April 14, 2022. These are legislative changes which respond in part to consultations and recommendations from the February 8, 2022 Report of the Housing Affordability Task Force which included 55 recommendations to increase the supply of housing in Ontario.

A public commenting period for Bill 109 was open until April 29, 2022. Despite the fact that the commenting timeframe was still open, the Province gave third reading and Royal Assent to the Bill on April 14, 2022, bringing the Bill into effect.

This report provides commentary and recommendations with respect to the legislative changes introduced in Bill 109 to the *Planning Act* and *Development Charges Act*.

Consistent with the Housing Affordability Task Force report, the legislation is guided in large part on the premise that reduced housing affordability is primarily a function of an increase in population and the lack of housing supply. Bill 109 is intended to target accelerating the development application review timelines and streamlining the approvals process.

Bill 109 has, among other things, introduced a number of new requirements into the planning process. Staff have concerns with respect to the implications of these amendments and the subsequent consequences that many of the amendments will create, as it significantly alters local decision making with respect to the development application process and has the potential to reduce public input and transfer the decision making from the Town to the Ontario Land Tribunal (OLT). This will inadvertently create delays in the planning process.

This report and the accompanying Official Plan Amendment responds to these concerns. These concerns are primarily driven by the following change:

- Decision timelines from a complete application are now tied to application fee refunds. Where no decision is made on *Planning Act* applications or an approval of a Site Plan Control application received after *The More Homes for Everyone Act, 2022* came into force, within the statutory timelines mandated by the province, it will now be necessary to refund application fees to the applicant. The refunds are issued on a sliding scale with time. The longer the processing of an application takes, the greater the fee refund is.

As application fees have a material impact on the Town’s revenue’s and service levels, the loss of this revenue will have a significant impact to the Town’s budget and service levels. Through Staff’s review of Bill 109, it was determined that introducing a mandatory complete application process and associated study requirements, will better enable the Town and Staff to ensure that any *Planning Act* application and Site Plan Control application deemed complete, has already been through a pre-consultation process where applicants have provided the requisite plans, studies and reports necessary to assist with the expeditious processing of an application.

Furthermore, due to the complexity of *Planning Act* and Site Plan Control applications, it is necessary to provide for sufficient consideration to an application by staff, agencies,

and the public. For this reason, staff are seeking to have each application submitted and processed individually, and to not combine them or process them concurrently.

Public Comments

On May 26, 2022, a Statutory Public Meeting was held, where no members of the public provided comments.

Agency Comments

County of Wellington Planning Department

- The County provided concerns with regards to Plan of Subdivision, Plan of Condominium, and Consent applications. The County communicated that these applications are under the authority of the County, and OPA No.14 should acknowledge this.

Grand River Conservation Authority

- No objection with the Official Plan Amendment.
- The draft text in Section 5.16.1 states that the Town will consult with the GRCA to determine which plans, reports, studies, impact assessments or other information, if any, will be required to be submitted for an application.

Planning Analysis

Streamlining the Approval Process: Refunds of Application Fees

The *More Homes for Everyone Act, 2022* introduces legislation which contains new provisions requiring municipalities to refund, in part or in their entirety, fees for rezoning applications if a decision by the municipality is not made within the timelines prescribed in the *Planning Act*. This change is to take effect on January 1, 2023.

Although the guiding goal of the legislation is to encourage the fast review and approval of applications, the refund schedule does not account for internal review, public consultation, collaboration with applicants, and the increasing complexity of intensification and the planning process. With these timelines Town staff and Council may, in some cases, be left with no option but to refuse applications as the iterative planning process often requires additional information, clarification or explanation, and multiple resubmissions to address staff, agency, public, and Council comments.

Table 1 – Refund Schedule

Amount of refund	Type of Planning Application		
	Zoning & OPA combined	Zoning	Site Plan

No refund	Decision is made within 120 days	Decision is made within 90 days	Plans are approved within 60 days of being submitted
50%	Decision made within 121 days and 180 days	Decision made within 91 days to 150 days	Plans are approved between 61 days and 90 days
75%	Decision made within 181 and 240 days	Decision made 151 days and 210 days	Plans are approved 91 days and 120 days
100%	Decision made 241 days and later	Decision made 211 days and later	Plans are approved 121 days and beyond

As is currently the case, applicants will continue to be able to appeal Council's decision to the Ontario Land Tribunal, which incurs costs to the Town not covered by application fees. These appeals, will add to the existing backlog of Ontario Land Tribunal cases to be heard, and would result in delays to the creation of new housing.

The refund structure and associated timelines undermines collaboration between applicants, staff, elected officials, and community stakeholders on planning applications. Consultation that takes place during the application review, builds the community capacity for change, and often reduces the prospect of an appeal later. Furthermore, other *Planning Act* provisions also impact the timeline for review of applications, including requirements for a statutory public meeting and public notice in advance of the statutory meeting.

In addition, the legislation fails to recognize that there are periods of time when municipal councils are not able to hear matters including periods during election years and other breaks in Council decision making. The legislation also fails to account for the time an applicant takes to respond to comments made on an application.

Application fees are intended to support the Towns review of the application. They act as a cost recovery mechanism. If the cost of reviewing applications is no longer guaranteed through application fees, the Town will need to find another source of funding. This highlights the impractical consequences of the legislation, even under circumstances where applications are well composed, communities are supportive and staff responses are timely.

While the intent of the application refund timeline appears to be to expedite the approval process, in reality the refund schedule could result in the unnecessarily pre-emptive refusal of applications. This will result in further delays, add cost to the Town, taxpayers and applicants, and provide for less public consultation which will lead to less desirable project outcomes.

Application Review and Fee Refunds

The timeline to appeal a Site Plan application is increased from 30 days to 60 days. This change will apply to applications submitted on or after July 1, 2022. Although welcome, the extension does not permit sufficient time to execute the Site Plan Control application process. As Site Plan Control enables a municipality to exercise site-specific controls over development, to ensure that a development proposal is well designed, fits in with the surrounding uses and minimizes any negative impact, more time is necessary for staff and agency review to fulfill these objectives. The Town may also apply conditions to Site Plan approval. Once the applicant satisfies the prescribed conditions, final Site Plan approval is granted. The onus to advance the application shifts, in part, to the applicant during this period to fulfill the conditions.

The timeframe of 60 days allows for Town staff to review the application but does not provide sufficient time for an applicant to prepare a response, resubmission or satisfy conditions, in advance of application fees having to be refunded. For this reason, the refund requirements are problematic.

As provided for in *The More Homes for Everyone Act, 2022*, if a Site Plan Control application cannot be approved (ex. if it does not conform to the in-force zoning by-law), a refund would still be required. In many instances applicants submit a Zoning By-law Amendment (or minor variance applications) and Site Plan applications concurrently to reduce the project review timeframe. In these instances, Site Plan application timing cannot be met as the timelines do not allow sufficient time to bring a Zoning By-law Amendment into force and approve a Site Plan application.

The More Homes for Everyone Act, 2022 implements a process whereby the Town must approve a Site Plan application or be required to refund the application fee. This differs from the new refund provisions for Zoning By-law Amendment applications whereby a decision is needed before fees must be refunded, but that decision does not necessarily have to be an approval.

Staff Recommendation

In response to the policies that require the refund of application fees, Staff are proposing to amend the Town's Official Plan, to require pre-application consultation prior to the submission of a formal *Planning Act* application. Presently, the Town of Erin recommends but does not require applicants to meet with Town staff prior to the submission of a *Planning Act* application. The requirement will apply to Town Official Plan Amendment, Zoning By-law Amendment, and Site Plan Control applications.

The More Homes for Everyone Act, 2022 guides us to bring greater emphasis to the importance of the early stages of the planning process, prior to an application being made. The pre-application consultation process will become critical to timely decision making of complete applications, and therefore it is important to have applicant's go through this process to clearly understand the requirements of a complete application (i.e. required plans, studies and reports by all relevant commenting agencies). Ultimately, this will assist Council to make a decision on an application within the statutory timelines.

Lastly, Official Plan Amendment No.14 recommends that where an application for a Zoning By-law Amendment application, or an application for Site Plan Control are

submitted in combination with other applications, the applications will be processed in sequential order to allow the Town sufficient time to review the individual applications, unless determined otherwise at the Town's sole discretion.

Strategic Pillar

Growth Management

Financial Impact

The *More Homes for Everyone Act, 2022* will have significant impacts on the Town's ability to review applications in a timely way. This may present the need to retain more resources to undertake the review of the development applications, to meet statutory timelines and to minimize application fee refunds. Staff will need to assess implications to resources resulting from these legislative changes including any impacts on the existing development application fees and any necessary changes to business processes.

Conclusion

Planning Staff recommend that Council approve the Official Plan Amendment found in Appendix A of this Report, and request Wellington County Council approve the Town-Initiated Official Plan Amendment No.14

Attachments

Appendix A – Official Plan Amendment No.14

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