Report to Planning and Environment Committee

To: **Chair and Members**
Planning and Environment Committee
From: **Scott Mathers, MPA, P. Eng.**
Deputy City Manager, Planning and Economic Development
Subject: **Bill 109, *More Homes for Everyone Act, 2022,* Information Report**
Date: **June 20, 2022**

Recommendation

That, on the recommendation of the Director, Planning and Development, this report with respect to Bill 109, the *More Homes for Everyone Act, 2022,* **BE RECEIVED** for information.

Executive Summary

On March 30, 2022, the Province introduced Bill 109, the *More Homes for Everyone Act, 2022* which proposes changes to the *Planning Act* and other statutes. The intent of these changes is to implement some of recommendations in the Ontario's Housing Affordability Task Force Report released on February 8, 2022 in order to help address the housing affordability crisis in Ontario.

The Province posted these changes on the Environmental Registry of Ontario (ERO) for public consultation and included a commenting deadline of April 29, 2022. On April 14, 2022, the Bill received Royal Assent in advance of the deadline and therefore did not consider input from the City of London or others.

Although the Bill had already passed, City staff made a submission to the Province indicating concerns with some of the changes. The submission focuses on two areas of concern including the refund of application fees and the removal of local decision-making authority.

This report provides an overview of changes to the *Planning Act* and identifies some possible updates to the City's planning processes required as a result of Bill 109.

Changes to multiple sections of the *Planning Act*, including the new Community Infrastructure Housing Accelerator (CIHA) tool, reflect a focus on municipal approval processes with respect to certain *Planning Act* applications and shift of local decision-making powers to the Ontario Land Tribunal and the Minister of Municipal Affairs and Housing. Changes to the *Planning Act* through Bill 109 that are significant to London include:

- Statutory application processing timeline for Site Plan applications is changed from 30 days to 60 days, and mandates municipal councils to delegate authority for site plan applications made on or after July 1, 2022 to municipal staff.
- Beginning January 1, 2023, municipalities will be required to refund applications fees for Zoning By-law amendments and Site Plan approval as a result of a failure to make a decision on a *Planning Act* application within the statutory timeline.
- The Bill establishes the Community Infrastructure Housing Accelerator (CIHA), which is a new tool similar to Minister's Zoning Orders and enables municipalities to submit a request to the Minister of Municipal Affairs and Housing to expedite approvals.
- Additional powers are given to the Ontario Lands Tribunal and the Minister to prescribe regulations or make decisions with respect to official plans or official plan amendments.

- Municipalities are given a one-time discretionary authority to reinstate subdivision plans that have lapsed within five years.

Analysis

1.0 Background Information

1.1 Ontario Housing Affordability Task Force and Bill 109

The Ontario Housing Affordability Task Force was appointed by the Province on December 6, 2021, to identify and implement solutions to address housing affordability by increasing the supply of market housing, reducing red tape, and supporting economic recovery and incentives. On February 8, 2022, the Task Force released a report that provides 55 recommendations aimed at supporting housing affordability.

On March 30, 2022, the Province introduced Bill 109, *More Homes for Everyone Act, 2022*. The Bill proposed changes to the *Planning Act* and other statutes to implement some of the recommendations in the Task Force report. The Province also posted Bill 109's proposed changes on the Environmental Registry of Ontario (ERO) for public input with a commenting deadline of April 29, 2022.

On April 14, 2022, the Province gave third reading and Royal Assent to the Bill bringing many of the changes into force and effect, which was part way through the commenting period. Staff submitted a letter to the Province indicating significant concerns on some of the changes. The letter is focused on two areas of concern that include refund of application fees and the removal of local decision-making authority as attached in Appendix A to this report.

This report provides an overview of changes to the *Planning Act* and identifies some possible updates to the City's planning processes required as a result of the Bill.

2.0 Bill 109's Amendments

2.1 Refund of Application Fees

Bill 109 adds financial penalties in the form of application fee refunds with respect to rezoning or site plan applications (Sections 34(10.12) and 41(11.1)). Municipalities must gradually refund application fees if an application is received on or after January 1, 2023 and no decision is made on the application within the statutory timeline.

The table below summarizes refund requirements based on the number of days before a decision is made.

Type of Application	No Refund	50% Refund	75% Refund	100% Refund
ZBA	90 days	91 to 149 days	150 to 209 days	210 days or after
Combined ZBA and OPA	120 days	121 to 179 days	180 to 239 days	240 days or after
Site plan	60 days	61 to 89 days	90 to 119 days	120 days or after

As noted in the City's letter in Appendix A, this would increase financial and administrative pressure to meet the statutory timelines. The refund requirements do not take into account delays that are a result of time spent revising an application or supporting materials. Delays in application processing are often a result of revisions being required to address issues and/or conform with applicable policies. In 2021, 58% of Zoning By-law Amendments were approved within 90 days and 24% of Official Plan Amendment and Zoning By-law Amendments within 120 days.

These changes will limit the opportunity for the timelines to be extended to reflect the normal planning review processes, and could lead to an increase in recommendations

for refusal. This could ultimately result in more steps in the planning process, including an increase in the number of appeals to the Ontario Land Tribunal (OLT), which could in fact extend the timelines to a final decision on an application. Further, mandatory refunds could lead to changes in municipal processes, where more information may be required at the pre-application consultation stage so that issues can be resolved prior to an application being submitted. Any applications that are referred back to staff by City Council for further discussion would lead to longer review timelines and almost certainly require a refund of fees.

Application fees are an important element of the planning and development process and are based on a 30% cost recovery target. Planning application fees were last reviewed in 2018, and an information report summarizing the rationale for the updated fees was presented to the Planning and Environment Committee on August 13, 2018. In that report, a number of factors were considered when determining an appropriate fee, including the principle that growth should pay for growth while balancing that with the need to provide a competitive rate and recognize the public benefit new development provides. Allowing application fees to be refunded would undermine this intent and shift the balance toward the tax levy covering a disproportionate share of the cost of development.

One possible outcome of this change is that is more time being directed to pre-application consultation and completeness reviews, rather than on the actual application. There will not be time to make significant to changes to applications without triggering a refund, so in some cases the only option will be to recommend refusal or for the applicant to withdraw the application.

Staff will review the current application review processes to identify an appropriate approach to address potential budgetary and administrative pressure while ensuring applications continue to be reviewed and considered in a timely manner.

2.2 Community Infrastructure and Housing Accelerator (CIHA)

Bill 109 introduces the Community Infrastructure and Housing Accelerator (CIHA), which is a new tool that would enable municipalities to request a Minister's Zoning Order. Municipalities may request the Minister of Municipal Affairs and Housing to issue a Minister's Zoning Order without public notice or consultation to streamline the approval process.

Guidelines for the CIHA tool are still in draft form, but if approved they would allow a municipal council to pass a resolution requesting the Minister to exercise its zoning powers. The CIHA may be used to accelerate the approval of licences or permits (e.g. a Conservation Authority Section 28 permit), and provides an exemption for other approvals from municipal or provincial plans and the Provincial Policy Statement. The Minister may impose conditions on the issuance on a CIHA order that must be addressed before the order comes into force. according to the draft guidelines, when the CIHA is used the municipality is responsible for public notice, consultation, and ensuring the order is available to the public. The draft guidelines are attached as Appendix B of this report.

This tool could eliminate significant aspects of the review process, including Conservation Authority permissions, and override locally significant concerns that municipalities are better informed to consider and address. Staff are uncertain how and where this tool may be used to ensure that public interest is achieved. Once the guidelines have been finalized, staff will review the guidelines to determine how the CIHA tool would apply to the City.

2.3 Ministerial Approval of Official Plans or Official Plan Amendments

The Minister of Municipal Affairs and Housing now has new discretionary authorities with respect to an official plan approval or amendment where the Minister is the approval authority.

The Minister may suspend the 120-day time period for making a decision on official plans and official plan amendments. For an official plan approval or amendment forwarded to the Minister on or before March 30, 2022, the Minister may retroactively suspend the time period, which would prevent municipalities from filing a non-decision appeal. Delays in Minister's approval would result in further delays in municipal approval processes.

The Minister may also refer all or parts of new official plans or official plan amendments to the Ontario Land Tribunal (OLT) to make either a recommendation or a decision on whether the official plan or official plan amendment should be approved, approved with modification, or refused. The OLT may hold a hearing or other form of proceeding before making its recommendation or rendering its decision. There is no appeal right with respect to the Minister's referrals.

2.4 Amendments to Site Plan Control

Previously, the *Planning Act* allowed for discretionary delegation of authority for site plan control decisions from municipal councils to staff. As of July 1, 2022, municipal councils are required to delegate approval authority with respect to site plan control applications, as recommended in the Housing Task Force Report. The City has implemented the delegation with respect to site plan applications to appointed officers under the Site Plan Control By-law, but Council retains the ability to take back approval authority. As a result of the mandatory delegation, Council will no longer be the approval authority.

Municipalities are now able to pass a by-law to require a pre-consultation before the submission of a site plan application. Currently the City has the Planning Pre-Consultation By-law and Site Plan Control By-law, which require an applicant to consult with staff prior to all site plan application.

Municipalities also have new regulation-making authority to prescribe complete application requirements for site plan applications. Municipalities must notify of the completeness of the application within 30 days of the payment of the application fee. A failure to notify allows the applicant to bring a motion to the OLT that may determine whether all required information and materials have been provided. This is similar to the complete application processes that currently apply to official plan amendment or zoning by-law amendment applications.

As noted in Section 2.1, the approval timeline for site plan applications is extended from 30 days to 60 days, which will alleviate some pressure on meeting the statutory timeline. 62% of Site Plan applications considered in 2021 were approved within 30 days and 85% within 35 days. However, staff is monitoring the site plan application packages and process to implement these changes. Possible changes to the City's current Site Plan Control By-law may be required to make sure that the consultation is part of complete application requirements and identify possible requirements for the completeness of the application.

2.5 Amendments to Subdivision Control

Municipalities, at their discretion, may reinstate draft plans of subdivision that have lapsed within the past five years without a new application. Council or its delegated approval authority has the authority to choose whether or not to reinstate recently lapsed draft plans of subdivisions.

The Minister has new regulation-making authority to prescribe matters that are not permitted to be imposed as conditions of subdivision approval. While these matters have not yet been released, the changes would limit the City's ability to impose conditions that would address site-specific concerns. It is unclear if and where this may apply locally and how this will have much impact to the City's subdivision approval process.

Staff will continue to monitor further details to consider and identify possible updates to the subdivision approval process.

2.6 Minister's regulation-making authority

The Minister of Municipal Affairs and Housing has additional authority to make regulations through the changes made by Bill 109 to implement some of the recommendations in the Housing Task Force report.

A recommendation in the Task Force report includes improved municipal reporting on development applications and approvals. The Minister may prescribe reporting requirements for municipalities with respect to planning matters, including what must be included in reports, who the reports are to be provided to, and the frequency and format of the reports. This could allow for opportunities to improve the City's development application and approval processes.

The Task Force report also recommended that municipalities must provide surety bonds as financial security, rather than exclusively requiring letters of credit from chartered bank. In response, Bill 109 grants the Minister new power to make regulations prescribing and defining surety bonds and other instruments. The Regulation, once in force, will authorize landowners and applicants to stipulate the type of surety bonds and other prescribed instruments to secure municipal requirements as part of planning approvals. This will come into force upon proclamation.

2.7 Changes with respect to Community Benefit Charges and Development Charges

The changes to reporting with respect to community benefit charges and development charges are intended to increase transparency for these tools.

If a municipality has a community benefit charge (CBC) by-law in effect, the municipality must publicly consult and review the by-law and pass a resolution indicating whether a revision to the by-law is needed. If the municipality does not pass the resolution within five years of the by-law first being passed or every five years thereafter, the community benefit charge by-law will be deemed to expire. The City of London does not have a CBC by-law and therefore no immediate implications resulting from the change.

Schedule 2 of Bill 109 has made changes to the *Development Charges Act* that require municipalities to provide treasurers' annual financial statements for development charges and reserve funds. The statements must be made available to public online or in a municipality's office. The City makes annual statements available to the public on the City's website.

Next Steps and Conclusion

Bill 109 has made significant changes to the *Planning Act,* focusing on the planning application review and approval process. While the intent is to incent quick decision making by municipalities, the changes could possibly lead to more refusals of applications, more time required on pre-application consultation, and more appeals to the OLT. All of this could lead to delays in the planning process and less opportunity for public consultation.

There are no immediate changes required to the City's planning policy documents, including the London Plan or the Zoning By-law, however staff will review and update the application review process ahead of the mandatory application fee refunds on January 1, 2023. This may include updates to the approval process and by-laws related to certain *Planning Act* applications. Staff will continue to monitor possible changes to the current process and bring additional updates at a later date.

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Recommended by:	**Gregg Barrett, AICP** **Director, Planning and Development**
Submitted by:	**Scott Mathers, MPA, P. Eng.** **Deputy City Manager, Planning and Economic Development**

Appendix A – The City's letter to the Province

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April 29, 2022

Ministry of Municipal Affairs and Housing
13th Floor, 77 Bay Street
Toronto, ON M5G 2E5

Sent by Email

Re: City of London comments on Planning Act Changes – The More Homes for Everyone Act, 2022
ERO number: 019-5284

The City of London appreciates the opportunity to comment on the changes made by Bill 109 to the *Planning Act.* However, given that the More Homes for Everyone Act has already received Royal Assent it is unclear what effect these and other comments submitted to the ERO posting can have on the legislation. In the future a more transparent process that allows for comments to be considered in new legislation is encouraged.

The City of London supports the Province's commitment and efforts to address the housing affordability crisis in Ontario, however, has significant concerns on some of the *Planning Act* changes made through Bill 109. This Letter is focused on two such areas of concern that include refunding of application fees and limiting local decision-making authority.

Refunding Planning Application Fees

The City does not support the mandatory refund of fees for applications submitted under section 34 (zoning by-law amendments) or section 41 (site plan control) when a decision is not made within the specified timeframe. These financial penalties will force municipalities to bring applications to a decision, which may include refusal, whereas there may be issues that could be resolved through dialogue with the applicant.

The intent of planning application fees is to cover a portion of the costs for staff to review and make recommendations on those applications. Losing that revenue is not an option as it would either reduce the City's capacity to process applications

and thereby exacerbate existing resource issues, or shift the costs of development to existing taxpayers, which is unfair.

Issues are often identified through the review of materials submitted as part of a planning application, which can often be resolved through revisions to the application. Delays in application processing are often a result of revisions being required to conform with applicable policies, so if the City does not have the flexibility to extend the review period the only option is refusal of the application.

The outcome of this *Planning Act* change could be an increase in recommendations for refusal and more steps in the planning process, including an increase in the number of appeals to the Ontario Land Tribunal. Further, refunds could lead to changes in municipal processes, where more information may be required in order to deem an application to be complete in the first place. This could also result in valuable review time being directed to completeness reviews, rather than application reviews.

Overall, the City is concerned that mandatory refunds will end up worsening affordability through unintended longer timelines and delays.

For site plan control applications, the City is supportive of extended review period to 60 days and authority to prescribe complete application requirements that will alleviate some pressure on meeting the statutory timeline.

Recommendation: Delete sections 34(10.12) and 41(11.1) of the *Planning Act* to remove mandatory refund of planning application fees.

Local Decision-Making

Many of the changes, including the new Community Infrastructure Housing Accelerator (CIHA) tool, shift local decision-making powers to the Ontario Land Tribunal and the Minister. The CIHA tool will accelerate required approvals and permissions while overriding locally significant concerns that municipalities are better informed to consider and address. The City recommends that the tool be limited to specific circumstances where public interest is achieved. A better process would be to allow municipalities to make decisions but eliminate appeal rights for the types of applications captured by the CIHA tool.

Ministerial authority to refer an official plan approval or amendment to the Ontario Land Tribunal for either a recommendation or decision, if acted on, will lead to additional backlog at the Tribunal and time and costs required for hearings to review municipal official plans. The City has significant concerns that this could override municipal policies that were developed in the public interest without due consideration of all of the impacts. While building more homes is a key strategic priority in London to address rising costs, decisions on residential development proposals must also consider other policy objectives.

Additional regulation-making authority for the Minister to prescribe matters that are prohibited to imposed as conditions to subdivision approval is of concern. While what these matters are have not yet been disclosed, the City is concerned that the authority could limit the City's ability to impose conditions.

Recommendation: Rather than by-passing public processes and a municipal council's ability to make decisions, allow for speedy implementation of decisions by limiting the appeal to the approval of planning applications that would add residential units.

Conclusion

These changes to the *Planning Act* focus on a very limited factor (the planning application review and approval process) affecting the housing affordability crisis in Ontario, and do not acknowledge the many opportunities that exist in municipalities such as London to develop housing that do not require a complicated planning application process or approval. The changes could lead to significant delays in the planning approval process, with less public consultation and less consideration of the public interest, including the protection of the natural environment and possible impacts to public health and safety.

Further, there will be significant budgetary pressure on the City as the refund of fees will be for work that has been done on an application. This will shift the cost of application review to the taxpayer, and not the applicant. These changes could result in applications being recommended for refusal if insufficient information is made available for Council to make a decision within the legislated timeline, as the mandatory refund of fees does not provide the opportunity for the timelines to be extended to reflect the normal planning review processes.

The City of London wishes to work together with the Province to address the housing affordability crisis in Ontario. The City requests that all comments received from local municipalities be considered and implemented through further changes.

Sincerely,

Gregg Barrett, AICP
Director, Planning and Development
City of London

cc. Erick Boyd, MMAH, Municipal Services Office – Western
Justin Adema, City of London

Appendix B – Draft Guidelines for Community Infrastructure and Housing Accelerator Tool

Community Infrastructure and Housing Accelerator – Proposed Guideline

Proposal Overview:

Bill 109, the More Homes for Everyone Act, 2022 was introduced in the Legislature on March 30, 2022. If passed, section 5 of Schedule 5 to the Bill would amend the Planning Act to establish a new "community infrastructure and housing accelerator" tool. The Minister of Municipal Affairs and Housing would have the power to make orders to respond to municipal council resolutions requesting expedited zoning outside of the Greenbelt Area.

Subsection 34.1 (25) of the Planning Act would require the Minister to establish guidelines governing how community infrastructure and housing accelerator orders may be made. The guidelines may, among other matters, restrict orders to certain geographic areas or types of development. The guidelines would have to be in place before a community infrastructure and housing accelerator order could be issued and would need to be published on a website of the Government of Ontario.

The draft guidelines outlined below have been prepared for consultation purposes. This consultation draft of proposed guidelines is intended to facilitate dialogue and stimulate feedback. The comments received during consultation will be considered during the final preparation of the guidelines.

Caution: The content, structure, form and wording of the consultation draft are subject to change.

Draft Guidelines: Minister's Orders at Request of Municipalities (Community Infrastructure and Housing Accelerator Tool)

Where the tool may be used

Subsection 34.1 (11) of the Planning Act provides that a community infrastructure and housing accelerator order cannot be made in the Greenbelt Area (as defined in Ontario Regulation 59/05 "Designation of Greenbelt Area") which includes specified lands within:

- the Oak Ridges Moraine Area
- the Niagara Escarpment Plan Area
- the Protected Countryside plan areas

- the Glenorchy Addition plan area
- the 2017 Urban River Valley Area Additions plan area
- Any additional Urban River Valley Areas that may be added through the current Growing the Greenbelt phase II consultation

Local municipalities (lower and single tier only) may request a community infrastructure and housing accelerator order relating to lands within their geographic boundaries.

Community infrastructure and housing accelerator orders

The Minister will consider making a community infrastructure and housing accelerator order on the request of the council of a local municipality (lower or single tier) where the Minister believes it is in the public interest to do so.

A community infrastructure and housing accelerator order can be used to regulate the use of land and the location, use, height, size and spacing of buildings and structures to permit certain types of development.

The requesting municipality is responsible for providing public notice, undertaking consultation and ensuring the order, once made, is made available to the public.

In issuing an order, the Minister is able to:

- provide an exemption for other necessary planning-related approvals from provincial plans, the Provincial Policy Statement and municipal official plans, but only if this is specifically requested by the municipality, and
- impose conditions on the municipality and/or the proponent.

Types of development

The Minister may make a community infrastructure and housing accelerator order to expedite the following types of 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, education, recreation, socio-cultural activities, and security and safety
- any type of housing, including community housing, affordable housing and market-based housing
- buildings that would facilitate employment and economic development, and
- mixed-use developments.

For greater clarity, a community infrastructure and housing accelerator order will address zoning matters and will not address environmental assessment matters related to infrastructure.

Subsequent approvals

When making a community infrastructure and housing accelerator order, subsection 34.1 (15) of the Planning Act would allow the Minister, upon request of a local municipality, to provide that specific subsequent approvals are not subject to provincial plans, the Provincial Policy Statement and municipal official plans. Subsequent approvals are licences, permits, approvals, permissions or other matters that are required before a use permitted by a community infrastructure and housing accelerator order could be established, such as plans of subdivision and site plan control.

The Minister will only consider an exemption from provincial policy requirements if the subsequent approval is needed to facilitate the proposed project, and the municipality provides a plan that would, in the opinion of the Minister, adequately mitigate any potential impacts that could arise from the exemption. This includes, but is not limited to, matters dealing with:

- Community engagement
- Indigenous engagement
- Environmental protection/mitigation

Conditions

The Minister may impose conditions on the approval of a community infrastructure and housing accelerator order. Conditions could be imposed to ensure that certain studies, assessments, consultations and other necessary due diligence associated with any proposed development that would be subject to the community infrastructure and housing accelerator order would be adequately addressed before construction or site alteration can begin. The lifting of a Minister’s condition is at the sole discretion of the Minister.

Existing Aboriginal or treaty rights

This guideline shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982.