

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 28, 2023

CASE NO(S): OLT-23-000057

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant	Building Industry and Land Development Association
Subject:	Proposed Official Plan Amendment
Description:	Updated policies in response to Bill 109 for application processes and pre-consultation processes
Reference Number:	OPA 53
Property Address:	Town wide
Municipality/UT:	Oakville/Halton
OLT Case No:	OLT-23-000057
OLT Lead Case No:	OLT-23-000057
OLT Case Name:	Building Industry and Land Development Association v. Oakville (Town)

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant	Building Industry and Land Development Association
Subject:	Proposed Official Plan Amendment
Description:	Updated policies in response to Bill 109 for application processes and pre-consultation processes
Reference Number:	OPA 53
Property Address:	Town wide
Municipality/UT:	Oakville/Halton
OLT Case No:	OLT-23-000058
OLT Lead Case No:	OLT-23-000057

Heard: September 25, 2023 by video hearing

APPEARANCES:

Parties

Counsel/Agent*

Building Industry and Land Development
Association
("BILD")

Adrianna Pilkington
Signe Leisk (*in absentia*)

Town of Oakville
("Town")

Nadia Chandra

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. INNIS AND D. CHIPMAN
ON SEPTEMBER 25, 2023 AND ORDER OF THE TRIBUNAL**

[Link to the Order](#)

INTRODUCTION

[1] The Tribunal had originally scheduled a Case Management Conference ("CMC") for the appeals by the BILD concerning the Town adoption of Official Plan Amendment No. 53 ("OPA 53") and Official Plan Amendment No. 329 ("OPA 329") as the town-initiated response to the provisions instituted by Province of Ontario's passing of Bill 109 - *More Homes for Everyone Act, 2022* ("Bill 109").

[2] The Parties informed the Tribunal that they had recently reached a settlement on the wording to be applied to the requested Official Plan Amendments ("OPA"). As a result, the Parties requested time to provide the necessary documents for the Tribunal's consideration and requested that the Tribunal proceed with providing a written decision based on the sworn planning evidence of Gabriel Charles, Director of Planning Services.

[3] In accordance with Rule 21.1 of the Tribunal's *Rules of Practice and Procedure*:

The Tribunal may conduct the whole or any part of a hearing event in writing unless a party satisfies the Tribunal that there is good reason for not doing so. Notice of a written hearing will be sent only to the known parties.

[4] The Tribunal agreed to provide the Parties with a decision based on its consideration of the proposed planning instruments and the written sworn opinion evidence of Mr. Charles in support of the settlement which is contained hereto.

[5] The Tribunal is in receipt of the Affidavit of Service of the Notice of the CMC as **Exhibit 1.**

SETTLEMENT

[6] The Tribunal received the following documents in support of the settlement and submitted them as exhibits:

Exhibit 2: Affidavit of Gabriel Charles

Exhibit 3: Official Plan Amendment 53 (Schedule 1)

Exhibit 4: Official Plan Amendment 329 (Schedule 2)

[7] On behalf of the Parties, the Town presented the written affidavit of Mr. Charles, Director of Planning Services for the Town of Oakville, to give expert opinion evidence in the area of land use planning in support of OPA 53 and OPA 329 ("OPAs 53/329").

PLANNING EVIDENCE

[8] The Town of Oakville has two official plans in effect, the Livable Oakville Plan ("LOP") and the 1984 Oakville Official Plan ("1984 OOP"). OPA 53 to the LOP and OPA 329 to the 1984 OOP, are intended to address changes made to the Act, resulting from the passing of Bill 109.

[9] Mr. Charles stated in his sworn Affidavit that the modifications proposed for both OPAs 53/329 are identical in text and substance. The modifications ensure that the public is informed prior to the submission of a development application, by making Public Information Meetings (“PIM”) mandatory.

[10] The proposed modified OPAs 53/329 indicate that the PIM ‘should’ be hosted by the applicant to inform the public of the proposed application, unless otherwise agreed as part of the pre-consultation process, prior to submission. It was his opinion that this modification clarifies that the policy is a directive and requires compliance unless proven otherwise on good planning grounds. Presently, he explained it is only the Town's practice to request an applicant to host a PIM in advance of the Zoning By-law Amendment (“ZBA”), OPA or draft plan of subdivision applications. The intent of the OPAs was to formalize the current practice.

[11] The Town’s Official Plan (Policy 29.1.9) provides the following: The modal verbs “may”, “should” and “shall” are used throughout this Plan in the following context:

- a. “may” means that the policy is permissive;
- b. “should” means that the policy is directive and requires compliance unless proven otherwise on good planning grounds; and,
- c. “shall” means that the policy is mandatory.

[12] The *Planning Act* (s. 17(19.3) and other similar subsections authorize 'alternative measures' for 'informing and obtaining the views of the public' in respect of Official Plan and Zoning Amendments. OPAs 53/329 require a developer to host a PIM to engage the public early in the process and allow the applicant to address issues in advance of a formal submission.

[13] Mr. Charles affidavit included the municipality's planning staff recommendation of the OPAs 53/329 in a report to Council dated November 22, 2022, which provided further planning evidence to support the intent of the OPAs.

CONCLUSION

[14] Having reviewed the uncontested sworn evidence, the Tribunal is satisfied that the proposed modification to OPAs 53/329 will result in good planning, and are in the public interest, as the intent of the OPAs is to formalize a process that may allow for greater public input into a development planning application process than what is legislatively required.

[15] OPAs 53/329 are consistent with and conform to matters of provincial interest and the Official Plan policies.

[16] This matter having come before the Tribunal as a settlement of consent between the parties and upon reviewing the minutes of settlement between the Parties, provided on consent, the Tribunal allows the appeals in part.

ORDER

[17] **THE TRIBUNAL ORDERS** that the appeal is allowed and the Livable Oakville Plan for the Town of Oakville, is amended, in accordance with Official Plan Amendment 53, as set out in Attachment 1 to this Order; and that the 1984 Oakville Official Plan in the Town of Oakville, is amended, in accordance with Official Plan Amendment 329, as set out in Attachment 2 to this Order.

“J. Innis”

J. INNIS
MEMBER

“D. Chipman”

D. CHIPMAN
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1**THE CORPORATION OF THE TOWN OF OAKVILLE****BY-LAW NUMBER 2023-136**

Official Plan Amendment No.53

A by-law to adopt an amendment to the Livable Oakville Plan in response to Bill 109, More Homes for Everyone Act, 2022 - Official Plan Amendment Number 53 (File No. 42.24.26)

WHEREAS the Livable Oakville Official Plan was adopted by Council on June 22, 2009, and approved with modifications by the Ontario Municipal Board on May 10, 2011;

WHEREAS subsection 21(1) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, states that a Council of a municipality that is within a planning area may initiate an amendment to any Official Plan that applies to the municipality, and section 17 applies to any such amendment;

WHEREAS Town Council deemed it necessary to pass an amendment to the Livable Oakville Official Plan to implement changes made to the *Planning Act*;

WHEREAS an appeal to the Ontario Land Tribunal under section 17(24) of the *Planning Act* was received (the "appeal"), which appeal was assigned Case Numbers OLT-23-000057; and

WHEREAS the Ontario Land Tribunal received evidence with respect to a settlement of the appeal including the modifications to the official plan set out in this by-law.

1. **PURSUANT to 17(50) of the Planning Act, R.S.O. 1990, c. P.13:** For the purposes of this by-law:
 - a. "Livable Oakville Official Plan" and "Livable Oakville Plan" mean the Official Plan for the Oakville Planning Area that currently applies to the lands south of Dundas Street and the lands north of Highway 407, and was adopted by Council on June 22, 2009, and approved with modifications by the Ontario Municipal Board on May 10, 2011, and as subsequently amended.
2. The Livable Oakville Plan is amended in accordance with Official Plan Amendment Number 53, attached as **Appendix "A"**.



By-law Number: 2023-136

ORDERED by the Ontario Land Tribunal by Order dated _____, 2023 in Case Numbers OLT-23-000057/OLT-23-000058.



By-law Number: 2023-136

APPENDIX “A” to By-law 2023-136

Official Plan Amendment Number 53 to the Town of Oakville’s Livable Oakville Plan

Constitutional Statement

The details of the amendment, as contained in Part 2 of this text, constitute Official Plan Amendment Number 53 (OPA 53) to the Livable Oakville Plan.

Part 1 – Preamble

A. Subject Lands

The Official Plan Amendment applies to all lands subject to the Livable Oakville Plan.

B. Purpose and Effect

The purpose of the OPA is to modify the text of the Livable Oakville Plan in response to changes that have been made to the *Planning Act* resulting from Bill 109, *More Homes for Everyone Act, 2022*.

The Province’s Bill 109 made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications, among other matters.

The proposed OPA responds to these changes by updating the town’s implementation policies regarding pre-consultation and complete application submission requirements and alternative notice procedures, directing (unless proven otherwise on good planning grounds) early public engagement prior to the submission of a development application, and a public engagement report as part of a complete application submission.

The effect of these changes will assist to ensure development application processing timelines can be met without the need to refund fees.

C. Background and Basis

- Bill 109, *More Homes for Everyone Act, 2022*, received Royal Assent on April 14, 2022.



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- Schedule 5 of the Bill made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications.
- The OPA updates the town's implementation policies regarding pre-consultation and complete application submission requirements and alternative notice procedures, directing (unless proven otherwise on good planning grounds) early public engagement prior to the submission of a development application, and a public engagement report as part of a complete application submission. The effect of these changes will assist to ensure development application processing timelines can be met without the need to refund fees.
- The OPA would put into effect the existing town practice that requests applicants to host a public information meeting regarding their development proposal in advance of the submission of a development application, as well as a summary of the meeting.
- OPA 53 was made available to the public for review on November 10, 2022. The statutory public meeting will be held on December 5, 2022, including a final recommendation.

Part 2 – The Amendment

A. Text Changes

The amendment includes changes to the text of the Livable Oakville Plan as described in the following table. In the “Description of Change” column, text that is **bolded and underlined** is new text to be inserted into the Livable Oakville Plan. Text that is crossed out (“~~strikethrough~~”) is to be deleted from the Plan.

Note: The policy numbering in this OPA reflects in-effect policies. Policy numbering will change following the final approval of OPA 35 (Hospital District) and OPA 41 (Bronte GO Major Transit Station Area). Section 28 will become section 30 following the approval of OPA 35 and OPA 41.



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Item No.	Section	Description of Change
1.	28.19.3 IMPLEMENTATION Pre-Consultation and Complete Application Submission Requirements	<p>Add a new policy subsection 28.19.3 i), following subsection 28.19.3 h), as follows:</p> <p>28.19.3 Unless an exemption is granted under section 28.19.5, the following information and materials shall be required to be submitted as part of any application for official plan amendment, zoning by-law amendment, draft plan of subdivision or draft plan of condominium, and shall be requested as applicable for other applications:</p> <p>...</p> <p><u>i) Public Engagement Considerations:</u></p> <p><u>i) if applicable, public information meeting report describing steps taken to engage the public and any input received</u></p>
2.	28.20.1 IMPLEMENTATION Alternative Notice Procedures	<p>Amend the policy, as follows:</p> <p>28.20.1 A public information meeting may should be hosted by the Town applicant, unless otherwise agreed as part of the pre-consultation process, to inform the public of a proposed application, official plan amendment, zoning by law amendment, draft plan of subdivision or draft plan of condominium prior to submission.</p>
3.	28.20.2 IMPLEMENTATION Alternative Notice Procedures	<p>Amend the policy, as follows:</p> <p>28.20.2 Notice of a public information meeting shall be provided by the applicant no later than 14 days prior to the date of the meeting.</p>
4.	28.20.4 c) IMPLEMENTATION Alternative Notice Procedures	<p>Amend the policy 28.20.4 c), as follows:</p> <p>c) Notice given regarding a site-specific proposal shall be placed in the local newspaper(s) or sent by personal service, ordinary mail, e-mail or fax to every owner of land within at least 120 metres of the subject land.</p>

ATTACHMENT 2**THE CORPORATION OF THE TOWN OF OAKVILLE****BY-LAW NUMBER 2023-135**

Official Plan Amendment 329

A by-law to adopt an amendment to the 1984 Oakville Official Plan in response to Bill 109, More Homes for Everyone Act, 2022, Official Plan Amendment Number 329 (File No. 42.24.26)

WHEREAS subsection 21(1) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, states that a Council of a municipality that is within a planning area may initiate an amendment to any Official Plan that applies to the municipality, and section 17 applies to any such amendment;

WHEREAS Town Council deemed it necessary to pass an amendment to the 1984 Oakville Official Plan to implement changes made to the *Planning Act*;

WHEREAS an appeal to the Ontario Land Tribunal under section 17(24) of the *Planning Act* was received (the "appeal"), which appeal was assigned Case Numbers OLT-23-000058/OLT-23-000057; and

WHEREAS the Ontario Land Tribunal received evidence with respect to a settlement of the appeal including the modifications to the official plan set out in this by-law.

PURSUANT to 17(50) of the Planning Act, R.S.O. 1990, c. P.13:

1. For the purposes of this by-law:

- a. "1984 Oakville Official Plan" means the Official Plan for the Oakville Planning Area adopted by the Council of The Corporation of the Town of Oakville on July 5, 1983 by By-law 1983-114, approved as modified by the Minister of Municipal Affairs and Housing on December 21, 1984 subject to certain referrals and deferrals, and as subsequently amended.

2. The 1984 Oakville Official Plan is amended in accordance with Official Plan Amendment Number 329, attached as **Appendix "A"**.

ORDERED by the Ontario Land Tribunal by Order dated _____, 2023 in Case Numbers OLT-23-000057/OLT-23-000058.

By-law Number: 2023-135

APPENDIX “A” to By-law 2023-135

Official Plan Amendment Number 329 to the Town of Oakville’s 1984 Oakville Official Plan

Constitutional Statement

The details of the amendment, as contained in Part 2 of this text, constitute Official Plan Amendment Number 329 to the 1984 Oakville Official Plan.

Part 1 – Preamble

A. Subject Lands

The Official Plan Amendment applies to all lands subject to the 1984 Oakville Official Plan.

B. Purpose and Effect

The purpose of the OPA is to modify the text of 1984 Oakville Official Plan in response to changes that have been made to the *Planning Act* resulting from Bill 109, *More Homes for Everyone Act*, 2022.

The Province’s Bill 109 made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications, among other matters.

The proposed OPA responds to these changes by updating the town’s implementation policies regarding pre-consultation and complete application submission requirements and alternative notice procedures, directing (unless proven otherwise on good planning grounds) early public engagement prior to the submission of a development application, and a public engagement report as part of a complete application submission.

The effect of these changes will assist to ensure development application processing timelines can be met without the need to refund fees.

C. Background and Basis

- Bill 109, *More Homes for Everyone Act*, 2022, received Royal Assent on April 14, 2022.



- The Province's Bill 109 made changes to the *Planning Act* by providing rules respecting when municipalities are required to refund fees in relation to processing times of development applications, among other matters.
- The OPA updates the plans' implementation policies regarding pre-consultation and complete application submission requirements and alternative notice procedures, directing (unless proven otherwise on good planning grounds) early public engagement prior to the submission of a development application, and a public engagement report as part of a complete application submission. The effect of these changes will assist to ensure development application processing timelines can be met without the need to refund fees.
- The OPA would put into effect the existing town practice that requests applicants to host a public information meeting regarding their development proposal in advance of the submission of a development application, as well as a summary of the meeting.
- OPA 329 was made available to the public for review on November 10, 2022. The statutory public meeting will be held on December 5, 2022, including a final recommendation.

Part 2 – The Amendment

A. Text Changes

The amendment includes the changes to the text of the 1984 Oakville Official Plan as described in the following table.

In the “Description of Change” column, text that is **bolded and underlined** is new text to be inserted into the 1984 Oakville Official Plan. Text that is crossed out (“~~strikethrough~~”) is to be deleted from the Plan.



Item No.	Section	Description of Change
1.	Part F IMPLEMENTATION AND INTERPRETATION Section 1.6 c) Pre-Consultation and Submission Requirements	Add a new policy section 1.6 c) ix), following section Part F Section 1.6 c) viii), as follows: c) Unless an exemption is granted by the Town under subsection f), the following information and materials shall be required to be submitted as part of any application for an Official Plan amendment, Zoning By-law amendment, draft plan of subdivision or draft plan of condominium, and shall be requested as applicable for other applications: ... <u>ix) Public Engagement Considerations:</u> <ul style="list-style-type: none"> <u>If applicable, public information meeting report describing steps taken to engage the public and any input received</u>
2.	Part F IMPLEMENTATION AND INTERPRETATION Section 1.7 a) Notice Procedures	Amend the policy as follows: a) A public information meeting may should be hosted by the Town applicant, unless otherwise agreed as part of the pre-consultation process , to inform the public of a proposed application , Official Plan amendment, Zoning By-law amendment, draft plan of subdivision or draft plan of condominium prior to submission .
3.	Part F IMPLEMENTATION AND INTERPRETATION Section 1.7 b) Notice Procedures	Amend the policy as follows: b) Notice of a public information meeting shall be provided by the applicant no later than 14 days prior to the date of the meeting.



By-law Number: 2023-135

Item No.	Section	Description of Change
4.	Part F IMPLEMENTATION AND INTERPRETATION Section 1.7 d) iv) Notice Procedures	Amend the policy Part F Section 1.7 d) iv), as follows: iv) Notice given regarding a site-specific proposal shall be placed in the local newspaper(s) or sent by personal service, ordinary mail or fax to every owner of land within <u>at least</u> 120 metres of the subject land.