

Sent electronically

May 10, 2024

The Honourable Paul Calandra
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON
M7A 2J3

Subject: Changes to the Development Charges Act, 1997
Comments from City of Pickering – ERO Posting 019-8371
File: L-1100-065

Please find attached Pickering Council Resolution #478/24 and Report PLN 13-24 as the City of Pickering's comments to Environmental Registry Ontario Posting 019-8371.

Thank you for your consideration.

Yours truly



Marisa Carpino
Chief Administrative Officer

MC:pw

Attachments Council Resolution #478/24
Report PLN 13-24

From: Kyle Bentley
Director, City Development & CBO

Subject: Environmental Registry of Ontario Postings: ERO 019-8366, ERO 019-8368, ERO 019-8369, ERO 019-8370, ERO 019-8371, ERO 019-8462
Bill 185 and Revisions to Draft Provincial Planning Statement

- City of Pickering Comments on ERO Postings
- File: L-1100-065

Recommendation:

1. That Council endorse the comments contained in Report PLN 13-24, as the City of Pickering Detailed Comments on the ERO Postings ERO 019-8366, ERO 019-8369, ERO 019-8371, and ERO 019-8462; and
 2. That Council authorize the Chief Administrative Officer to submit the Council endorsed comments on the identified ERO postings to the Ministry of Municipal Affairs and Housing website by the May 10, 2024 deadline.
-

Executive Summary: On April 10, 2024, the Province released *Bill 185: Cutting Red Tape to Build More Homes Act, 2024*, an updated draft Provincial Planning Statement, and other proposed legislative changes, for comment on the Environmental Registry of Ontario. The purpose of this report is threefold:

- to provide information to Council regarding the Province of Ontario's proposed changes to various pieces of legislation under Bill 185, as well as proposed revisions to the draft Provincial Planning Statement
 - to seek Council's endorsement of staff's comments on those proposed changes
 - to authorize the Chief Administrative Officer to submit Council's comments to the Province
-

Relationship to the Pickering Strategic Plan: The recommendations in this report respond to the Pickering Strategic Plan Priority of Advance Innovation & Responsible Planning to Support a Connected, Well-Serviced Community.

Financial Implications: The recommendations of this report do not present direct or immediate costs to the City of Pickering.

Discussion: On April 10, 2024, the Province released *Bill 185: Cutting Red Tape to Build More Homes Act, 2024*, for comments on the Environmental Registry of Ontario (ERO). This Bill includes proposed changes to various pieces of legislation, regulation, and policy, with the

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stated purpose of helping the government achieve its goal of building 1.5 million homes by 2031. At the same time, the Province released a revised draft Provincial Planning Statement (Planning Statement). The commenting period concludes May 10, 2024.

The purpose of this report is to inform Council of these proposed changes in legislation, seek Council's endorsement of staff's comments on these changes, and authorize the Chief Administrative Officer (CAO) to submit these formal comments to the Province on the proposed legislative changes in Bill 185 and the revised draft Provincial Planning Statement.

1. Background

The following postings were listed on the Environmental Registry of Ontario (ERO) for a 30-day commenting period concluding on May 10, 2024. The ERO Postings are summarized below:

1.1 ERO 019-8370 Proposed Changes to Regulations under the *Planning Act* and *Development Charges Act, 1997* Relating to the *Bill 185, Cutting Red Tape to Build More Homes Act, 2024 (Bill 185)*: Newspaper Notice Requirements and Consequential Housekeeping Changes

Regulatory changes are proposed that would modernize public notice requirements under the *Planning Act* and *Development Charges Act, 1997* by allowing municipalities to give notice of public meetings and of by-law passage, on a municipal website if a local newspaper is not available.

1.2 ERO 019-8369 Proposed *Planning Act, City of Toronto Act, 2006, and Municipal Act, 2001* Changes under *Bill 185*

Various changes are proposed to appeal rights, additional dwelling units requirements, lapsing provisions for development approvals that do not proceed to construction, application fee refunds, the development review process, upper-tier planning responsibilities, and the development approval process for certain public facilities.

1.3 ERO 019-8371 Changes to the *Development Charges Act, 1997* to Enhance Municipalities' Ability to Invest in Housing-Enabling Infrastructure, in part under *Bill 185*

The Province is proposing to amend the *Development Charges Act, 1997* to: repeal the five-year phase-in of Development Charges (DCs); reinstate growth-related studies as an eligible cost for DCs; reduce the timeframe for the DC freeze from two years to 18 months; and streamline the process for municipalities to extend existing DC by-laws.

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1.4 ERO 019-8368 Proposed Amendments to Ontario Regulation 73/23: Municipal Planning Data Reporting supporting *Bill 185*

The Province proposes to revise the existing requirements for municipalities to report to the Province on development approvals.

1.5 ERO 019-8366 Proposed Regulatory Changes under the *Planning Act* Relating to the *Cutting Red Tape to Build More Homes Act, 2024 (Bill 185)*: Removing Barriers for Additional Residential Units (ADUs)

The Province is seeking feedback on zoning barriers to the construction of ADUs.

1.6 ERO 019-8462 Review of proposed policies for a new Provincial Planning Policy instrument (comments deadline Sunday, May 12, 2024)

The Province is proposing revisions to the draft Provincial Planning Statement, initially released for comment in April 2023. The Provincial Planning Statement contains updated policies supporting increased intensification (e.g., around transit and redevelopment of low-density commercial plazas and strip malls), scoping protections for employment areas, and promoting a range and mix of housing options, including housing for students and seniors.

2. Staff comments on the proposed changes to *Planning Act* and *Development Charges Act*

The following section summarizes only the primary changes proposed to the *Planning Act* and *Development Charges Act* which, in staff's opinion, present certain concerns or challenges to the City.

2.1 ERO 091-8369: Eliminate minimum vehicle parking space requirements for Protected Major Transit Station Areas (MTSAs)

If approved, municipalities will no longer be permitted to require a minimum number of vehicle parking spaces within MTSAs (such as the City Centre). However, municipalities may continue to mandate a minimum number of required bicycle parking spaces. This change applies to all parking requirements, not just residential development (that is, it also applies to commercial, employment, and institutional uses).

The vision for the Pickering City Centre is a mixed-use area, that contains the highest concentration of density and activity within the City. It is anticipated that the intensity of this built form will support new and enhanced methods of transportation, yet still include the personal automobile. In reviewing recent development applications, staff have been provided with evidence from sales data, indicating that demand for vehicle parking spaces has been decreasing. Yet, Pickering is still relatively suburban, and the City Centre is served by GO Transit Service, not a subway. Other than the municipal parking

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lots associated with the Civic Complex and the Chestnut Hill Developments Recreation Complex, and some on-street parking, there is no significant supply of public parking for visitors to the area for a destination with no parking of its own.

The City has a role in protecting the public interest, such that new development does not solely rely on parking provided by other property owners and developers in the City. The proposed amendment is too broad to be applied to all MTSA's at this time. A more tempered approach should be adopted at this time, by applying this new requirement only to those MTSA's served by subway service. MTSA's in other locations should be able to establish minimum required resident and visitor parking requirements, based on up-to-date evidence of demand.

The proposed amendment is not supported for the City of Pickering.

2.2 ERO 091-8369: Eliminate mandatory pre-consultation

Currently, the *Planning Act* grants a council or planning board authority to pass a by-law to require applicants to consult with the municipality or planning board before formally submitting a development application (OPA/ZBA/Site Plan). Bill 185 proposes to eliminate the ability for municipalities to formally require pre-consultations with staff prior to submitting an application.

It is unclear if the proposed change is intended to eliminate "pre-consultation" meetings or "pre-submission" reviews. As illustrated in Attachment 1, "pre-consultations" are meetings held at the beginning of the process. The "pre-submission" stage was introduced to provide review of development proposals prior to a formal application submission, in order to avoid parties being subject to the virtually impossible-to-achieve approval timeframes (and corresponding application fee refunds) created by Bill 109. By eliminating application fee refunds, Bill 185 will remove the need for pre-submissions, allowing municipalities to return to the original review process. It is recommended that the Province revert the *Planning Act* to what it was with respect to pre-consultations, prior to Bill 109.

The purpose of a pre-consultation meeting is to identify any anticipated issues related to a proposal and give direction to the proponent to prepare the materials necessary to address those issues. These meetings are often held within two to four weeks of being requested. If this change is approved, proponents will now have the ability to skip pre-consultations and submit applications without formal guidance from staff or other commenting agencies. This may lead to delays as proponents will be requested to make changes or add missing items to their submission before a full review can begin.

This proposed amendment to eliminate fee refunds is supported, while the change to eliminate the requirement for pre-consultations is not supported.

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2.3 ERO 091-8369: Allow an applicant to challenge complete application requirements at any time

Presently, the *Planning Act* states that an applicant has 30 days to lodge an appeal to the Ontario Land Tribunal if a municipality deems their planning application incomplete and stops reviewing it. Bill 185 proposes to remove the 30 days deadline and allow applicants to appeal the complete application requirements at any time after the application submission, whether it has been reviewed for completeness or not.

The objective of the Provincial Government is to minimize delays in application review times or to “cut red tape”. The list of complete application requirements is prepared following a pre-consultation meeting. This list is known before an application is submitted. Should the applicant wish to challenge this list of requirements, there is no reason to wait until late in the application review process. This is counter-productive to staff and agency time and will delay an application further by causing it to wait to be heard at the Ontario Land Tribunal. Put another way, these proposed changes (to eliminate pre-consultations and to enable immediate appeals) removes any meaningful opportunity for municipalities to pro-actively communicate submission requirements to an applicant, and consequently exposes the applicant to “red tape” remedies, which is what the Province is trying to avoid. Staff recommend that the appeal aspect of the *Planning Act*, with respect to a complete application, remain as it was prior to the enactment of Bill 109.

This change is not supported.

2.4 ERO 019-8366 and ERO 091-8369: Reducing requirements for ADUs

The Province is requesting comments on any existing zoning regulations that may be limiting the construction of ADUs – whether within an existing dwelling or external to the main dwelling. The Province suggests that some of the zoning regulations that could be removed in the future include: minimum parking requirements and maximum lot coverage (the amount of land covered by all buildings on a lot).

The City was proactive, and passed new ADU zoning regulations in September 2023, following a robust community engagement process. These zoning regulations are specific to Pickering’s context and character. Below is further detail on two of the City’s current zoning regulations for ADUs.

Pickering’s ADU regulations already provide zero parking requirements in the City Centre and provide reduced parking requirements to properties that are close to major transit (the GO Station and Kingston Road). While it may be reasonable to consider further reducing/eliminating parking requirements for properties in south Pickering that are located near transit, it would be pre-mature to remove parking requirements from areas of the City, such as Seaton, which are poorly served by transit today, and which do not yet have schools, shopping, and services nearby.

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The size limits placed on ADUs, such as lot coverage requirements, were based on models of various Pickering properties (small urban lots, large urban lots, rural lots, and estate lots). Eliminating a zoning provision in all instances does not reflect a property's unique context and constraints.

Making universal changes to the zoning for all ADUs throughout the Province, without consideration for local context, is not supported.

2.5 ERO 091-8369: Allow municipalities to offer incentives for business attraction

Municipalities are currently prohibited from directly or indirectly assisting businesses or commercial enterprises through the granting of bonuses. This includes prohibitions on:

- giving away any municipal property or money
- guaranteeing private borrowing
- leasing, or selling any property of the municipality below fair market value, or
- giving a total or partial exemption from any levy, charge, or fee

(This practice differs from Community Improvement Grants, which are applied to a specific area and are open to all qualified participants.)

Bill 185 proposes to make future regulations authorizing municipalities to grant assistance, directly or indirectly, to a specified industrial or commercial business, where the Province decides that it is in the provincial interest to attract investment in Ontario.

If a given industry is significant enough to garner provincial interest, it is incumbent upon the Province to provide the assistance necessary to create an environment conducive to attracting that business. Municipalities do not have the financial clout or resources to compete directly with jurisdictions outside of Ontario for business attraction.

Further, jurisdictions which allow municipalities to compete directly with one another, through the use of financial incentives, to attract new businesses leads to a "race-to-the-bottom" approach that benefits the businesses at the expense of the municipal tax base. In addition, any perceived benefits to workers in that the community cannot be guaranteed, as labour in the Greater Toronto Area (GTA) is highly mobile.

This change is not supported.

2.6 ERO 091-8369: Eliminate Durham Region planning responsibilities

The Region of Durham has responsibilities respecting the provision of water, sanitary services, regional roads, and various services, including waste management, police, emergency services, transit, and others. Yet, Bill 23 removed Durham Regional Council's role in approving land-use planning decisions. The Bill did not set a timeframe for this to occur. The changes introduced in Bill 23 will make long-range, growth management planning more time-consuming, and more expensive, for local municipalities such as Pickering.

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Once in effect, planning policy and approval responsibilities of the regional municipality will be removed, and the lower-tier municipalities will assume primary responsibility for all planning in their geographies, except for matters requiring Provincial approval.

Bill 185 reiterated the plan to remove the Durham Region planning authority, but has still not set a date for the removal of this authority.

It is recommended that the Province not proceed with removing Durham Region's planning authority.

2.7 ERO 091-8369: "Use it or Lose it" – Permit municipalities to withdraw servicing allocation and development approvals

The Provincial Government is currently providing financial incentives to municipalities that meet their targets for housing starts. It is unlikely that municipalities would wish to remove development approvals or servicing allocations for projects not begun within a prescribed timeframe, unless it had a direct correlation to other developments proceeding in their place.

As long as municipalities are empowered, but not required, to use this new power, this change is supported.

2.8 ERO 091-8369: Allow private applications and appeals of boundary expansions

In the past, municipal boundaries were only expanded after a municipal comprehensive review process had been completed, that projected how much land was needed for future growth, and evaluated what areas were best suited to accommodate that growth. This legislation would now require municipalities to consider privately-initiated applications to expand municipal boundaries at any time (provided they are located outside of the Greenbelt). This approach is not good planning as it:

1. ignores the established land use vision within the Durham Region Official Plan and the City of Pickering Official Plan;
2. replaces a City-wide view of growth with a narrower view of growth that is driven by a private application;
3. ignores the fact that planning for growth requires significant resources, and is best done on a regular cycle where municipal resources can be effectively planned, for and assigned;
4. does not result in faster development, as infrastructure planning is based on long-range planning forecasts, and not on ad hoc applications; and
5. ties up municipal resources responding to private boundary expansion requests (and appeals), rather than reviewing applications that conform with the Official Plan and are supported by planned infrastructure.

This change is not supported.

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2.9 ERO 091-8369: Enable streamlined approvals for community service facilities

Bill 185 proposes to streamline the approvals process for community service facilities, such as public schools (K-12), hospitals, and long-term care homes. While the principle of prioritizing the approvals for these uses is key to growing a successful community, it is unclear what is intended by “streamlining”. If the Province’s intention is to exempt public facilities from processes, such as Site Plan Control, staff disagree. The site plan approval process plays an important role in obtaining, coordinating, and resolving potentially conflicting comments from agencies. The objective of site plan control is to create a site which functions in the best interests of the public (i.e., mitigating any potential adverse impacts to abutting property owners), and the site users, while meeting technical requirements, for such matters as stormwater management, night sky compliant lighting, and vehicular and pedestrian circulation.

This change is not supported given the lack of detail provided.

2.10 ERO 091-8369: Exempt publicly-assisted universities from the *Planning Act* and planning provisions

With the exception of properties located within the Greenbelt, it is proposed that publicly-assisted post-secondary institutions be made exempt from the *Planning Act*. This means that they would not be subject to zoning requirements, nor would they be subject to Site Plan control. Construction for these institutions would only be subject to the Ontario Building Code and any other category of applicable law required for a Building Permit.

Some development on the campus of a publicly-assisted post-secondary institution may be located within the centre of the campus and have little to no impact on the surrounding community. However, any development near, or on the perimeter of the campus, will have a direct relationship with either a public right-of-way (road) or neighbouring private properties. As noted in the item above, part of the role of Site Plan control is to anticipate and mitigate any potential impacts for the benefit of adjacent property owners.

This change is not supported.

3. Proposed Provincial Planning Statement and Staff Comments

As previously reported in PLN 16-23, in May of 2023, the Province is proposing to combine various policies of A Place to Grow and the Provincial Policy Statement, 2020, plus introduce new policies, to form a new land use policy document – the Provincial Planning Statement (Planning Statement). The recent ERO postings included proposed revisions to the draft Provincial Planning Statement. Staff believe it is important for us to repeat a number of our previous comments to the Province, along with a new comment, as our recommendations for submission to that ERO posting.

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3.1 ERO 019-8462: Previous comments given on the draft Planning Statement through PLN 16-23

- That the Province identify the basic parameters for a future Land Needs Assessment. This will provide clarity regarding how they are to be conducted for municipalities and the development community;
- That the Planning Statement require “large and fast-growing municipalities” to identify minimum intensification targets, and provide criteria for municipalities to identify built-up areas where intensification targets would apply;
- That the Planning Statement indicate that, where municipalities identify minimum densities for strategic growth areas and greenfield areas to address local conditions, they shall not be appealable;
- That the Province restrict settlement area expansions and employment area conversions to occur only through an Official Plan review, not through privately initiated, appealable, official plan amendments;
- A specific amount of employment area land, i.e., 15%, be allowed to be used for office and institutional uses, or that municipalities be authorized to consider limited office and institutional uses within employment areas, subject to criteria. This will give municipalities more flexibility in planning employment areas while protecting majority of the lands for manufacturing, and other permissible uses;
- That the Planning Statement be revised to include the same criteria as the current Provincial Policy Statement (PPS), on compatibility when introducing sensitive uses adjacent to industrial, manufacturing or other major facilities that are vulnerable to encroachment;
- Delay, by a minimum period of two years from proclamation, the effective date after which an application for conversion could be submitted on lands no longer meeting the new definition of Employment Area;
- Staff recommends that the issuance of a Minister’s Zoning Order should have regard for the local Official Plan, and be supported by City Council; and
- That, although the definitions for “Affordable” housing for “low and moderate” households”, for both ownership and rental have been substantially reinstated from the PPS, (to recognize both household income threshold, and relative sale or rental price threshold), staff recommend the geography to determine the sale and rental price thresholds be amended from the current wording of “the municipality” to the “regional market area” as in the PPS 2020.

The updated Planning Statement should be revised to address the above noted matters.

3.2 ERO 019-8462: Eliminate support for on-site and local reuse of excess soil

One of the updates to the Planning Statement is to remove the policy that requires, where feasible, on-site and local reuse of excess soil through planning and development approvals. The intent of this policy is to ensure that soil excavated within

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the City is deposited elsewhere in the City and that soil from other jurisdictions is not dumped in the City. This not only allows the City to prevent the importing of potentially contaminated soil from elsewhere, but it also maintains the water balance within a given subwatershed area. If site limitations do not permit soil to be reused on-site, then excess soil should be relocated within the local area, thereby maintaining an overall water balance. It is unclear what benefit is served by eliminating this requirement.

The Planning Statement should be revised to reinstate the deleted clause on reuse of excess soil.

4. Additional Comments to the Province

Some of the proposed changes to the *Planning Act* and the *Development Charges Act* reflect the Province “walking back” from changes they previously made. In the spirit of re-evaluating previous legislative changes, it is recommended that the City provide additional comments for the Province to consider.

4.1 ERO 019-8371: Development charge exemption for non-profits

Through Bill 23, the Province exempted non-profit housing developers from paying development charges. On the surface, this change would appear to provide support to developers of affordable housing. However, while affordable housing is the goal of many non-profit housing developers, there is nothing requiring these developers from constructing all or even part of development for affordable housing. Therefore, it is possible that a wealthy individual or corporation could use a non-profit corporation to construct luxury condominiums or executive homes, which would be exempt from paying development charges. There are no limits on the compensation paid to the members of the non-profit corporation.

It is recommended that the Province qualify the development charge exemption for non-profit housing development to only those units that are defined as affordable.

4.2 ERO 019-8369: Restore alternative parkland rate

Through Bill 23, the Province reduced by half the alternative parkland rate that municipalities use to calculate parkland contributions for higher-density developments. In addition to cutting the rate in half, they also capped the maximum contribution based on the size of the property. Reducing parkland contributions has the effect of reducing the developer’s costs, but it does so at the cost of limiting parkland in the areas where it is needed the most. The provision of programmable, accessible parkland in strategic locations forms an integral part of developing “complete communities”.

Unlike low density residential areas, residents of high-density developments do not have personal yards to use outdoors. Instead, they are completely reliant on private amenity areas offered by the development. Private amenity areas are often highly programmed and may only include limited landscaping, such as rooftop patios. The

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parkland collected by the City is used to create City parks that can be enjoyed by residents and their visitors as well as the employees and customers of businesses in the area. These businesses are sometimes located in the ground floor of these buildings. City parkland can offer a more naturalized experience and more diverse programming than private amenity areas and can sometimes be consolidated with other parkland resources (land or funds) to create a larger park than one development could provide on its own.

It is recommended that the Province consider restoring the previous alternative parkland rate and increasing the maximum parkland caps.

5. Conclusion

Staff have reviewed the proposed legislated changes in the ERO postings, along with the revisions to the draft Provincial Planning Statement. In the interest of time and brevity, only those changes that represent a concern to the City have been listed in this report.

As stated by the Province, the proposed changes are intended to “cut red tape” and help achieve the Provincial housing target of 1.5 million homes by 2031. While some of the proposed changes will support the City’s ability to expedite development review, and will stem the substantial funding losses from development charges cuts, other changes run counter to an efficient planning process and providing proper municipal governance.

Staff have prepared these comments and recommendations for Council’s endorsement, to be submitted as the City’s formal comments to the ERO by May 10, 2024.

Attachment:

1. Pre-consultation and Development Application Process – City document

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Prepared By:

Approved/Endorsed By:



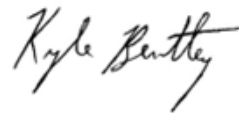
Paul Wirch, RPP
Principal Planner, Policy



Catherine Rose, MCIP, RPP
Chief Planner



Dean Jacobs, MCIP, RPP
Manager, Policy & Geomatics



Kyle Bentley, P. Eng.
Director, City Development & CBO

PW:ld

Recommended for the consideration
of Pickering City Council



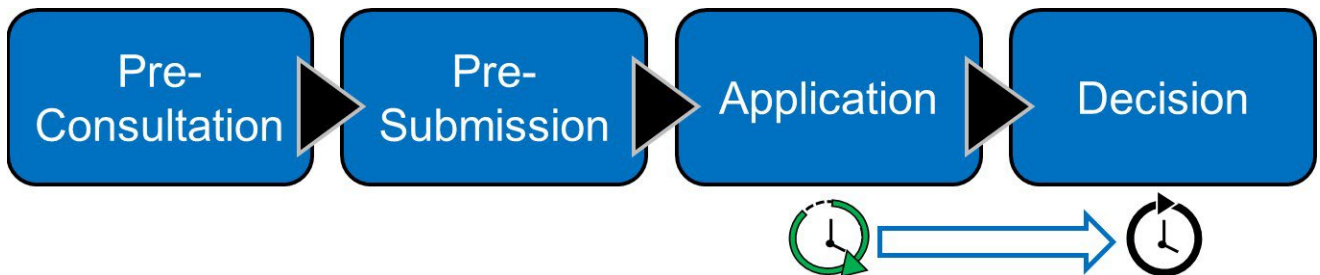
Marisa Carpino, M.A.
Chief Administrative Officer

Pre-consultation and Development Application Process

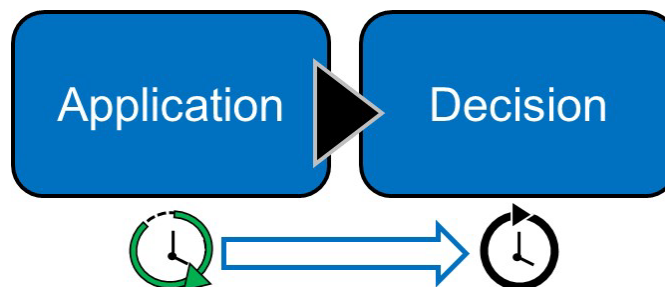
1. Development application process prior to Bill 109 and the introduction of Application fee refunds.



2. Development application process post-Bill 109 when the Pre-Submission stage was introduced to avoid Application fee refunds.



3. Development application process post-Bill 185 with the removal of application fee refunds (**supported**) and the removal of Pre-Consultation meetings (**not supported**).



Legislative Services Division
Clerk's Office
Directive Memorandum

May 9, 2024

To: Kyle Bentley
Director, City Development & CBO

From: Susan Cassel
City Clerk

Subject: Direction as per Minutes of the Special Meeting of City Council held on
May 6, 2024

Director, City Development & CBO, Report PLN 13-24
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Council Decision

Resolution #478/24

1. That Council endorse the comments contained in Report PLN 13-24, as the City of Pickering Detailed Comments on the ERO Postings ERO 019-8366, ERO 019-8369, ERO 019-8371, and ERO 019-8462; and,
2. That Council authorize the Chief Administrative Officer to submit the Council endorsed comments on the identified ERO postings to the Ministry of Municipal Affairs and Housing website by the May 10, 2024 deadline.

Please take any action deemed necessary.

Susan Cassel

Copy: Chief Administrative Officer