

Report

Report No. DS2019-065	To: Council	Prepared By: Andria Leigh, Director, Development Services
Meeting Date: May 22, 2019	Subject: Proposed Bill 108 (More Homes, More Amendments)	Motion # _____
Roll #: n/a		R.M.S. File #: L11

Recommendation(s):	Requires Action <input checked="" type="checkbox"/>	For Information Only <input type="checkbox"/>
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It is recommended:

1. That Report No. DS2019-065 be received and adopted; and
2. That Council authorize Planning staff to make a submission to the Ministry of Municipal Affairs and Housing based on the comments as outlined in Report DS2019-065 through the Environmental Registry (019-0016, 019-0017, and 019-0021) as the Township's submission on the Proposed Bill 108 (More Homes, More Choices Act) in addition to any other comments received by Council.

Background/Analysis:

On May 2, 2019, the Minister of Municipal Affairs and Housing announced the Province's Housing Supply Action Plan and introduced Bill 108 (More Homes. More Choices Act) in the Legislature. The Government has indicated the intent of the Bill is to increase affordable housing in Ontario, make it easier to bring housing to the market, and to accelerate local planning decisions. The proposed amendments are intended to help streamline development approvals, improve transparency, and support the Housing Supply Action Plan.

This Bill proposes to amend 13 different statutes including the Cannabis Act, Conservation Authorities Act, Development Charges Act, Education Act, Endangered Species Act, Environmental Assessment Act, Environmental Protection Act, Labour Relations Act, Local Planning Appeal Tribunal Act, Occupational Health & Safety Act, Ontario Heritage Act, and the Planning Act.

Bill 108 and the associated Schedules are posted on the Environmental Registry of Ontario until June 1, 2019 for comment. Given the timelines since the posting of the Bill and the extent of the proposed Amendments identified in the Bill, staff have had limited time to complete an analysis of the proposed legislation and the impacts on municipalities like the Township of Oro-Medonte. In addition, more detail regarding the impacts of the proposed legislation will be provided in any proposed regulations which are not yet available for comment.

Discussions have been undertaken with other municipalities in Simcoe County regarding Bill 108 and at the timing of writing this report no other Simcoe County Council has discussed the proposed legislation or any comments to be submitted for submission. The Town of Penetanguishene and the Township of Severn, like the Township of Oro-Medonte, will also be considering staff reports on May 22; the Township of Tiny and the Town of New Tecumseth will be considering staff reports and submission comments on May 27; and the County of Simcoe and the Township of Wasaga Beach will be considering staff reports and submission comments on May 28. The Township of Tay will not be considering a staff report until after the June 1 submission deadline. The other municipalities in Simcoe County to date have indicated that they have not been requested to prepare a report for Council's consideration.

The Association of Municipalities of Ontario (AMO) has also provided an overview of the changes on May 7, 2019 and these are provided for Council's review in Attachment #1 to this report. AMO does identify that some of the proposed amendments may be positive for municipalities however there are other amendments that may result in financial and service impacts to municipalities that cannot yet be determined based on the information available.

Additionally Aird and Berlis has provided a preliminary summary of the key changes in proposed Bill 108 which are contained in Attachment #2 to this staff report.

Below is a summary of some of the proposed changes and potential implications for the Township:

Schedule 2 – Conservation Authorities Act

The proposed amendments would identify the mandatory programs and services to be provided by Conservation Authorities including: Natural Hazard Protection and Management, Conservation and Management of conservation authority lands, source protection authority under the Clean Water Act, and protection of the Lake Simcoe watershed as prescribed under the Lake Simcoe Protection Plan (LSPP) (specific to the LSRCA). The proposed amendments will also provide the ability for the Conservation Authority and a municipality to enter into agreements for the provision of additional programs and services on behalf of the municipality that would be outlined in a memorandum of understanding or other agreement including the terms and conditions and fees associated with the provision of these programs and services. Similar to other proposed amendments, further details regarding the future regulations that will identify the specifics of the core programs and services will be important to fully understand the implications to the Township in regard to; the current CA levy amounts paid annually by the Township to the NVCA and the LSRCA, the implications on the Township's current MOU with NVCA and SSEA, the future programs and services to be provided to the Township, and the associated costs for Council's review and decision before implementing.

Schedule 3 –Development Charges Act

The ERO posting (0019-0017) states that the proposed amendments are intended to reduce development costs and provide more housing option that can make housing more attainable for people. The proposed amendments are intended to: boost housing supply and support a range and mix of housing options, increase the certainty of costs of development, and to make housing more attainable by reducing the costs to build certain types of homes

The proposed amendments would defer development charges for rental housing until occupancy and to be paid over a five-year timeline. The amendments would, freeze development charges by requiring their payment earlier in the development approval process (zoning by-law

amendment or site plan approval rather than building permit stage), exempting second suites in newly built homes or accessory structure from the payment of development charges. The proposed amendment also removes “soft services” from being eligible services for consideration in a Development Charges Study. This would be considered under a new Community Benefit Charge under the Planning Act however, more detail is required on the regulations and transition in order to fully understand the implications to Development Charges or the process to enact a new Community Benefits Charge By-law.

These proposed changes will have an impact on the Township’s update to the Development Charges Study to be completed and implemented in 2019. As staff do not have definite timelines for the Bill 108 changes coming into force and effect, the full implications on the Township’s Development Charges Study update cannot be fully understood at this time.

Schedule 5 –Endangered Species Act

The proposed amendments include the ability for the Minister to enter into Landscape Agreements that would authorize activities that would otherwise be prohibited with respect to a listed species at risk. In addition, the proposed amendments establish a Species at Risk Conservation Fund and an agency to manage the fund that would provide an alternative means for development where the protection of onsite habitat would be problematic. Similar to other proposed amendments, more information regarding the regulations is required in order to fully understand the potential implications of these amendments.

Schedule 6 – Environmental Assessment Act

The proposed amendments to the Environmental Assessment Act propose to exempt several types of projects from the Class EA Assessment requirements. The proposed amendments also intend to impose limitations on persons making requests for orders under Section 16, and must be completed within a prescribed timeline.

Schedule 9 – Local Planning Appeal Tribunal Act

The proposed amendments repeal many of the amendments introduced through Bill 139 in 2017; these changes return the appeal system for Ontario Planning decisions to the former OMB structure with respect to hearings and the test for “good planning” rather than the conformity and consistency tests established in Bill 139. The proposed amendments also remove the two stage process for appeals established under the LPAT process. There are also changes in those that can appeal specific decisions regarding the non-decision on Official Plans (to the approval authority, the Minister, or the applicant) and plans of subdivision (the applicant, the Minister, the municipality, certain public bodies). The return to “de novo” hearings based on a wider grounds for appeal and reinstating the power of the LPAT to be the substitute decision maker for Council and the provisions for the introduction of new information and materials at a hearing. It is unknown how this will impact the LPAT timelines for hearings and scheduling and whether this will result in further delays to the scheduling of hearings. Additional Tribunal resources will need to be considered in order to ensure timeline scheduling of hearings and decisions, especially given that Heritage Act appeals will also now be considered through the LPAT process.

In addition, as discussed below, given the proposed reductions in the timelines for decision making in regard to Planning Act applications, before a non-decision can be appealed to the LPAT it is anticipated that additional matters will be appealed to the LPAT resulting in an increased workload and additional costs to the municipality. The Bill also establishes mandatory

mediation or other dispute resolution processes which again may result in additional financial and legal costs to the municipality.

Schedule 11 – Ontario Heritage Act

The ERO posting (019-0021) states that the proposed amendments are intended to support streamlining development approvals and increasing housing supply, while continuing to empower municipalities to identify and conserve their cultural heritage resources. The posting includes changes to the process for “listing” properties on the Township’s register, ensuring notice is provided to property owners of the intent to list the property and enable them to object to Township Council.

The proposed legislative amendments will also provide clearer rules and additional tools for the municipality to facilitate a timely and transparent process for reaching decisions under the Heritage Act. The proposed amendment establishes clear timelines for notifying property owners when their applications for alteration or demolition are complete, timelines for a municipality to issue a notice of intent to designate a property, timelines for passing a designation by-law after the notice of intent to designate, and requiring municipal decisions related to heritage designation and alterations to be appealable to the Local Planning Appeal Tribunal.

The proposed amendments allow for a local municipality to initially hear the property owners objections on a notice of intent to list or designate prior to the decision, and any further appeal to the LPAT. The proposed amendments also provide well defined rules that can be consistently applied across all municipalities regarding the timelines and notification processes for listing and designating heritage properties.

Schedule 12 - Planning Act

The ERO posting (019-0016) states that the proposed amendments are intended to increase the supply of housing and streamline development approvals. The Planning Act amendments are intended to bring new housing online faster, to reduce development costs and to provide more housing options to make housing more attainable for more people in Ontario.

The proposed amendments reduce the time frame for making local planning decisions for Zoning By-law Amendments to 90 days for Official Plan Amendments and Plans of Subdivisions to 120 days; currently the timelines are 150 days and 210 days respectively.

The amendments also look to increase the options for secondary suites by allowing these to be located in accessory structures and not just the main dwelling (single detached or townhouse dwelling). As noted in the Development Charges section, these secondary suites would also be exempt from Development Charges. The amendments also look to remove the current Section 37 density bonusing provisions, which the Township has typically not utilized, with a Community Benefits Charge. This will require the Township to pass a by-law that would impose a charge against land for the “capital costs of facilities, services and matters required because of development or re-development”. The monies collected are required to be maintained in a specific account and 60% of the monies collected are required to be spent annually. Should a municipality pass a by-law it cannot use the Parkland dedication section of the Planning Act. As noted in the Development Charges section there are additional financial implications related to these proposed amendments. The proposed regulations for these amendments will be significant for the Township to clearly understand the financial implication and the impacts on parkland dedication either through acquisition of land or cash in lieu of parkland.

Additional amendments include changes to the conditions under which the municipality can establish inclusionary zoning by-laws which in Oro-Medonte would be limited to areas that are within a development permit system. The amendment would allow the Minister to order an area to be subject to inclusionary zoning. In addition, the Minister or the municipality can initiate the use of a Community Planning Permit System (formerly Development Permit system)

Financial / Legal Implications / Risk Management:

There are no current implications as a result of adopting this report; however as identified in this report future implications (financial and legal) that would result from the implementation required to be completed by the Township of any of the legislated changes made by the Province. Are difficult to quantify at this time without the details to be outlined in the proposed regulations.

Policies/Legislation:

- Planning Act, R.S.O. 1990, c.P.13
- Provincial Policy Statement, 2014
- A Place to Grow Act, 2019

Corporate Strategic Goals:

In 2016, Council adopted the Township's Strategic Plan. The following Goals of the Plan are relevant to the proposed legislated changes:

Enhanced Communications & Customer Service – We demonstrate a culture of open communication and engagement that delivers on 'customer come first'.

Balanced Growth – We support business and job creation while protecting our natural environment.

Inclusive, Healthy Community – We are a community that is safe, accessible and inclusive.

Consultations:

Simcoe County Planning Directors

Attachments:

Attachment #1 – AMO May 7, 2019 Bill 107 and Bill 108 review comments
Attachment #2 – Aird and Berlis May 6, 2019 Municipal Planning and Law Bulletin

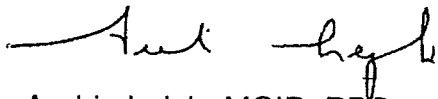
Conclusion:

This report highlights the proposed changes to the Planning Act, the Local Planning Appeal Tribunal, the Ontario Heritage Act, and the Development Charges Act and their preliminary impact on municipal land use planning, the development approval process, heritage conservation and on funding for community facilities. At this time it is clear that further information regarding the implementation details (to be provided in proposed future regulations) is necessary to determine the full impacts the proposed Bill will have on the Township from a financial, legal, and staffing resources perspective, in order to accommodate the proposed shorter review timelines for development approvals and the costs to ensure development pays for itself and does not


become a burden on existing taxpayers. The Province has not provided any information as to the timing or content of these proposed regulations. Township staff will continue to review the potential impacts of the proposed legislation and intend to bring forward additional comments for Council's consideration once the regulations are released by the Province. It is therefore recommended that the Province provide additional time for consultation on Bill 108 and that municipalities be provided the opportunity to review and comment on any draft regulations before Bill 108 comes into force and effect to understand the full implications of the proposed Bill on the Township of Oro-Medonte.

On this basis, staff are recommending to Council that Planning Staff be authorized to submit comments on behalf of the Township through the Environmental Registry posting consistent with those identified in report DS 2019-065 and any additional comments as directed by Council at their May 22, 2019 meeting.

Respectfully submitted:



Andria Leigh, MCIP, RPP
Director, Development Services

SMT Approval / Comments:	C.A.O. Approval / Comments: 
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ATTACHMENT #1

AMO'S INITIAL REVIEW OF *BILL 107, THE GETTING ONTARIO MOVING ACT, 2019* AND *BILL 108, THE MORE HOMES, MORE CHOICES ACT, 2019*

May 7, 2019

On May 2nd, 2019, two Bills of key interest to municipal governments were introduced. *Bill 108, the More Homes, More Choices Act, 2019* addresses the shortage of affordable housing across the province by finding faster ways of getting a greater mix of housing supply on the ground. *Bill 107, the Getting Ontario Moving Act, 2019* updates numerous road safety rules and allows the province to assume ownership over Toronto's subway infrastructure.

This update will focus on schedules of primary importance to municipal governments. We will continue to analyze the legislation and keep you updated as further information becomes available. A number of changes will require regulations.

Bill 108, The More Homes, More Choices Act, 2019

The Bill contains numerous amendments to many pieces of legislation. Considering the pressure on the Ontario government, Bill 108 contains some positives for municipal governments. Other aspects of the Bill may result in financial and service impacts that need to be determined. We have put the Schedules in order of primary importance.

Schedule 3 – Amendments to the *Development Charges Act*

The Housing Supply Action Plan reflects the long-standing idea that growth should pay for growth but brings some changes that will alter Development Charges (DCs). These include:

- The separation of DCs and a new Community Benefits Charge (CBC) regime to pay for as yet unspecified municipal services. Greater clarity is needed and will be provided through anticipated regulations. CBCs are discussed under Schedule 12.
- Municipal governments may now charge the full capital costs of waste diversion services in the calculation of development charges (not including landfill sites, landfill services, or incineration). This is a positive development.
- Proposed changes also affect rules on when development charge are payable if the development is rental housing, institutional, commercial, industrial or non-profit housing. In these cases, development charge payments to the municipality will now be made as six annual instalments commencing upon occupancy. Municipal governments may charge interest from the time of building permit issue and the interest rate will be determined by regulation. Notably, front-ending payment agreements reached prior to the Act coming into force will be preserved.
- Against municipal advice, second dwellings or dwelling units will be exempt from development charges.
- Public library material (for reference or circulation) will also be excluded from development charge calculations.

A deeper analysis of Schedule 3 and its potential impacts is underway. Once completed, we will provide members with this information.

Schedule 9 – Amendments to the *Local Planning Appeal Tribunal Act*

The LPAT remains but will no longer evaluate appeals based on compliance with official plans and consistency with provincial plans and policy. Instead, it will return to a “best planning outcome” approach. This means a return to *de novo* hearings. This is very disappointing for municipal governments as it will again take final planning decisions out of elected councils’ hands. Historically, the use of a *de novo* approach to appeals has drawn out hearings. It is unclear how this reversal will speed up housing development.

On the positive side, the Bill proposes limits to third party appeals of subdivisions and promotes increased mediation to resolve appeals. There will also be new limits on the extent of testimony. As well, the province has committed to hiring additional staff to help deal with the existing LPAT case backlog that arose from the OMB process and transition. It may be that current land use applications at Council tables are withdrawn to come in after Bill 108 rules take effect. AMO will consult with the Ministry as transition rules and accompanying regulations are considered.

Schedule 12 – Amendments to the *Planning Act*

The proposed Bill touches on numerous land use planning policies. Overall, these changes may have the desired effect of increasing the mix of housing and speeding up the process.

To facilitate housing mix, the Bill would allow the creation of second units in ancillary buildings. It also reduces timelines for making decisions related to official plans from 210 to 120 days and from 150 to 90 days for zoning by-law amendments. It also proposes to shelter plans of subdivision from third party appeals.

The schedule also proposes to change the conditions under which municipal governments can establish inclusionary zoning by-laws and policies to facilitate affordable housing development. Inclusionary zoning would be limited to areas around protected major transit stations or areas with a development permit system in place. The Bill would also allow the Minister of Municipal Affairs and Housing to exercise authority to order an area to be subject to inclusionary zoning. These proposed changes will continue to allow municipal governments the ability to enact inclusionary zoning but will restrict the application of this affordable housing tool.

Another change is that either the municipality or the Minister can initiate the use of a Community Planning Permit System (CPPS) in areas strategic for housing growth.

The proposed legislation also introduces a new Community Benefits Charge (CBC) regime to address the costs of providing services to new residents as a result of growth. This is a change to Section 37 allowing a municipality, through a by-law defining an area, to impose community benefits charges against land to pay for capital costs of facilities, services and matters required because of development or redevelopment in the area. Notably, costs of growth eligible for development charges are excluded from the new Community Benefits framework.

The CBC by-law will be based on a strategy produced by the municipality which identifies the costs of growth not covered by development charges. As well, the Ministry of Municipal Affairs and Housing will be preparing a list of eligible items for the charge, methodology for calculating the charge and any caps they may deem necessary. AMO has discussed with the province the need for a transparent transition to this new means of recuperating the cost of growth.

It should be noted that the CBC will be held in a special account and these funds must be spent in keeping with the Act and regulations. Specifically, each year a municipality will have to spend or allocate at least 60 per cent of the monies that are in the special account at the beginning of the year. Certain lands (i.e. hospitals) will be exempted from the new Community Benefits regime. These exemptions will be listed in a future regulation.

Another proposed change relates to parkland. Parkland costs can be included in the Community Benefits Charge or they can be charged under subsection 42 (1). However, there will be changes to the methodology.

AMO will continue to monitor additional details as they become available. If Bill 108 becomes law, many regulations would be required for implementation.

Schedule 2 – Amendments to the *Conservation Authorities Act*

Schedule 2 introduces a new concept of Conservation Authority (CA) 'core services.' Core services' includes programs and services related to natural hazard risks, land management and conservation of lands owned or controlled by the authority, source water protection under the *Clear Water Act, 2006*, and other CA responsibilities under legislation as prescribed in regulations. As well, the Lake Simcoe Conservation Authority has specific responsibilities related to the *Lake Simcoe Act*. Expectations on the standards and expectations for these core services will be set out in regulations.

The draft amendments will also require CAs to enter into memoranda of understanding with municipal governments on service delivery to avoid duplication, especially where planning and development are concerned. Knowing what CAs are required to do, what is discretionary and how this impacts the levy as part of a municipal agreement is welcomed.

This schedule also includes governance and oversight-related provisions such as CA board member training and Minister oversight. Assurances that Conservation Authority Board members have training about their responsibilities is good governance.

AMO will participate in discussions with the Ministry of Natural Resources and Forestry and the Ministry of Environment, Conservation and Parks on the implementation of these changes, including draft regulations, in the months ahead.

Schedule 6 – Amendments to the *Environmental Assessment Act*

The province is proposing to increase the exemptions for low risk activities within the municipal class EA. These could include speed bumps, de-icing, and streetscaping. As well, the province has exempted itself from a number of EA requirements related to transit, mines, parks and real estate. A consultation paper has been released and AMO will be providing comment.

While greater information around Duty to Consult, the sale of provincial brownfields and the bump up process is being sought by AMO, these proposed changes reflect long term requests from the municipal sector.

Schedule 5 – Amendments to the *Endangered Species Act*

The suite of changes contained in this schedule is intended to streamline development while protecting endangered species. The proposals remain science-based and seek to balance both species-at-risk protections and human endeavours in a new way.

The proposed changes would require that species at risk be considered in the broader geographic context (both inside and outside Ontario) when determining species' status. The role of the Committee on the Status of Species at Risk in Ontario (COSSARO) will remain the same. However, to increase predictability, their reports will now be due each year in January. Bill 108 also creates more realistic timelines, enables the phasing in of protection implementation and gives the Minister discretion to consider social and economic realities when determining a government response to species at risk.

A key change is that the Minister will be able to enter into 'landscape agreements.' A landscape agreement authorizes activities that would otherwise be prohibited with respect to one or more listed species. Agreements will include requirements to execute specified beneficial actions that will assist in the protection or recovery of species.

Bill 108 also establishes a Species at Risk Conservation Fund and an agency to manage and administer the Fund. The purpose of the Fund is to provide funding for activities that are reasonably likely to protect or recover species at risk. Where a municipal work or a development damages a habitat, a charge in lieu of meeting certain imposed conditions would be possible with a permit. The municipality or developer would still have to minimize impacts and seek alternatives. This creates an alternative path for development where protection of onsite habitat is problematic.

AMO continues to work with the Ministry as they formulate policy, draft regulations and programming to implement these proposed changes.

Schedule 11 – Amendments to the *Ontario Heritage Act*

The Bill proposes changes that would improve heritage register maintenance and transparency. The legislative amendments would require a municipal council to notify the property owner if the property is not formally designated but has been included in the register due to cultural heritage value or interest.

The proposed legislation also includes new timelines for a number of notices and decisions that are currently open-ended under the existing regime. The amendments also provide additional clarity to the meaning of 'alteration' and 'demolition.' All of these changes should add more certainty to the process and make it more transparent and efficient.

Schedule 1- Amendments to the *Cannabis Control Act*

Schedule 1 clarifies provisions for interim closure orders for illegal dispensaries and creates exemptions allowing police and other emergency responders to enter the premises for 'exigent circumstances.' The schedule also repeals a provision that exempted residences from interim closure orders. This is to deal with the tactic of putting a residency within an illegal dispensary.

Bill 107, The Getting Ontario Moving Act, 2019

Bill 107 focuses on making roads safer for Ontario residents. The draft legislation also creates authorities for the provincial government to upload subway infrastructure.

Schedule 1 – Amendments to the *Highway Traffic Act (HTA)*

Bill 107 would amend the HTA to align sections related to driving under the influence to correspond with updates to the *Criminal Code of Canada*. This is necessary to ensure charges are consistent and defensible in court.

Another proposed change of key interest to municipal governments is the creation of an Administrative Monetary Penalty (AMP) regime for municipal governments to charge drivers that pass an extended school bus stop arm outfitted with a camera. The province will be putting forward regulations to allow the evidence from these cameras to be used in court. Municipal governments are keen to introduce school bus stop arm enforcement cameras to help keep children safe. Along with the anticipated deployment of Automated Speed Enforcement (ASE) technology in School and Community Safety Zones, these measures should provide the ability for local governments to more efficiently enforce road safety in communities.

A concern for municipal governments relates to fine collection. Section 21.1 (13) of the Bill provides that an AMP that is not paid in accordance with the terms of the order is a debt to the Crown. AMO recommends that the legislation be amended to consider it a debt to the Crown or a municipal government, depending on its nature, as provided through a new regulation.

Bill 107, if passed, would also amend the rules to automatically allow off-road vehicles on municipal roads in all areas of the province. This amendment reverses the onus as these vehicles are currently prohibited unless a municipal government passes a by-law to allow them.

Another change is the anticipated alignment of Ontario's rules for commercial vehicles with other jurisdictions. This includes allowing the use of wide-based single tires for trucks and aligning the rules with other jurisdictions for charter bus operations in the province.

Penalty increases are also proposed for drivers that endanger workers such as construction personnel or tow truck drivers on highways and for drivers that drive too slowly in the left-hand lane. Bill 107, if passed, will also introduce new penalties for impaired driving instructors, for removing or defacing traffic signs and prohibiting vehicles from entering bicycle lanes and bus terminals.

The province will also review the rules of the road for bicycles, e-scooters and e-bikes as well as consult on raising highway speed limits.

Schedule 3 – Amendments to the *Metrolinx Act*

The legislation creates the mechanism for the Ontario government to prescribe rapid transit project design, development or construction as the sole responsibility of Metrolinx through regulation and to prohibit further action on that project by the City of Toronto. The proposed amendments would allow the Minister to issue directives to the City of Toronto and its agencies.

The changes in this legislation are limited to the City of Toronto and its agencies as defined under the *City of Toronto Act*, specifically the Toronto Transit Commission (TTC). However section 47 (1) of the legislation allows the province to assume assets "with or without" compensation or recourse to the City. The Act further stipulates that this transfer would not constitute a breach of by-laws, rights or contracts nor is it an expropriation. Section 51 (3) limits proceedings for remedies or restitution.

AMO notes that these proposed provisions could set precedents for changes beyond the TTC subway where the provincial government assumes municipal assets without fair compensation. AMO will review this further given its potential application in other municipal-provincial contexts.

Schedule 5 – Amendments to the *Public Transportation and Highways Improvement Act (PTHIA)*

Bill 107 proposes to update the PTHIA to recognize activities such as grading of land and broadens the definition of infrastructure to include "structures" in addition to bridge and underpass construction in the Ministry permit zone.

Schedule 6 – Amendments to the *Shortline Railways Act*

The Bill updates the Act to define a railway as a rail service to encompass its operations, to allow the registrar to more easily add, amend or revoke conditions on licenses and to provide processes for doing so, including by electronic means. Railways are required to provide operational information on a regular basis and to notify the registrar of changes to corporate officers or to the services provided. The Bill also proposes to abolish the current requirement for

a shortline rail service that will discontinue operations to offer to sell to the Government of Ontario at salvage value.

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May 6, 2019

Bill 108: Summary of Key Amendments to *Planning Act* and *Local Planning Appeal Tribunal Act*

By **Meaghan Barrett**

On May 2, 2019, Bill 108, the *More Homes, More Choices Act, 2019* received First Reading. Bill 108 proposes a number of amendments to the land use planning regime in Ontario.

Bill 108 proposes to repeal many – but not all – of the amendments introduced through Bill 139 (the *Building Better Communities and Conserving Watersheds Act, 2017*) in 2017. Bill 139 renamed and reconstituted the Ontario Municipal Board as the Local Planning Appeal Tribunal (the “LPAT”), and made significant changes to the *Planning Act* and land use planning approval process. Bill 108 retains the LPAT name, but proposes to repeal the contentious “two-stage” appeal process, returning to a single hearing.

WHAT’S OLD IS NEW AGAIN

Bill 108 proposes to repeal many key amendments introduced through Bill 139, including:

- **Grounds for appeal:** Bill 108 proposes to repeal the requirement that appeals be exclusively on the basis that approval of the instrument is inconsistent with the Provincial Policy Statement, fails to conform or conflicts with a provincial plan or fails to conform with an Official Plan. Appellants can still raise these grounds of appeal (and provide supporting reasons), but would no longer be limited to just those grounds.
- **No two-step appeal process:** Bill 108 proposes to return to a single hearing where the LPAT would have the power to make a final determination approving, refusing to approve or modifying all or part of the instrument under appeal. While Bill 108 also proposes to amend restrictions in the current *LPAT Act* on parties’ ability to introduce evidence and examine or cross-examine witnesses at hearings, as discussed further below, the Tribunal has the authority to limit evidence at a hearing.

WHAT’S NEW

Bill 108 introduces several entirely new proposed amendments, including:

- **Community benefits charge:** Bill 108 proposes to replace the existing Section 37 density bonusing provisions with a new community benefits charge. Where a municipality has passed a community benefits charge by-law, the community benefits charge may replace the parkland dedication provisions in some cases. The proposed community benefits charge would apply to an approval of the following instruments:
 - zoning by-law or zoning by-law amendment,
 - plan of subdivision,
 - minor variance,
 - plan of condominium, and
 - building permit.

However, the Province will have the authority to exempt certain types of development from the charge. Before passing a community benefits charge by-law, municipalities will be required to prepare a community benefits charge strategy, identifying the facilities, services and matters to be funded with community benefits charges. Bill 108 proposes to cap the amount of community benefits as a percentage of land values, to be prescribed by regulation. Bill 108 also sets out a process for owners to object to the value of the community benefits charge, and a process governing municipalities' collection and use of the funds, including a requirement that the municipality spend or allocate at least 60% of the funds in a year.

- **Shorter timelines for appeals of a municipality's or approval authority's failure to make a decision:** The time-frames for municipal processing of development applications (before a right to appeal arose), which had been extended in Bill 139, are now proposed to be even shorter than the pre-Bill 139 *Planning Act*.

Instrument	Pre-Bill 139	Bill 139	Bill 108
Official Plan/ Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

- **Power to limit any examination or cross-examination of a witness:** Through related changes to the *LPAT Act*, the LPAT is proposed to have the power to limit any examination or cross-examination of a witness if the Tribunal is satisfied that all matters relevant to the issues in the proceeding have been fully or fairly disclosed, or in any other circumstances the Tribunal considers fair and appropriate.
- **Restriction on third party appeals of plans of subdivision:** Only the applicant, municipality, Minister, public body or prescribed list of persons are proposed to have the right to appeal an approval authority's decision on a draft plan or subdivision, lapsing provision or any condition of draft plan approval.

WHAT'S THE SAME

Bill 108 proposes to retain a number of Bill 139 and earlier amendments, including:

- **Mandatory case management conferences:** The LPAT requires that a case management conference be held prior to any hearing for purposes such as identifying the issue(s) raised

by the proceeding, discussing opportunities for settlement and determining administrative details of the conduct of hearings. The LPAT is proposed to have a new power mandating mediation or other dispute resolution process to resolve one or more issues in the proceeding.

- **Major Transit Station Areas:** Municipalities may still include policies delineating Major Transit Station Areas (“MTSAs”), identifying minimum residents and jobs per hectare, authorized uses of lands and minimum densities in their official plans. The prohibition on appeals of MTSA policies is also proposed to remain.
- **Two-year freeze on secondary plan amendments, zoning by-law amendments and minor variances:** The two-year prohibition on requests for amendments to secondary plans is proposed to remain, together with the two-year prohibition on zoning amendments/minor variance applications following the approval of a comprehensive zoning by-law or site specific zoning by-law amendment.
- **Minister’s appeal of an interim control by-law:** The Minister continues to have the only right of appeal of a municipality’s first passing of an interim control by-law (any person or public body may appeal an extension of an interim control by-law, but only the Minister may appeal an interim control by-law when first passed).
- **No appeals of Minister’s decisions:** There continues to be no right to appeal the Minister’s decision if the Minister is the approval authority of an official plan or official plan amendment, including in the case of municipal comprehensive reviews (an “MCR”) and official plan review. This is particularly relevant since *A Place to Grow*, which updates the *Growth Plan for the Greater Golden Horseshoe, 2017*, permits some employment land conversion and settlement area expansions without an MCR.

The final content of Bill 108 has not yet been determined and proposed regulations are not yet available. Matters such as transition along with other matters that were addressed in regulations to the *LPAT Act* are expected to be dealt with in the regulations. Revisions to the LPAT’s Rules of Practice and Procedure are also anticipated.

Further Municipal & Planning Law Bulletins will be published this week to review how Bill 108 and other current provincial initiatives propose to affect land use planning and development in Ontario. Aird & Berlis will continue to monitor Bill 108 and will provide you with periodic updates, including a webinar to be scheduled in the coming weeks.