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# Proposed Bill 108, More Homes, More Choices Act, 2019 and the Housing Supply Action Plan

Submission from the Ryerson City Building Institute

May 31, 2019

*Note: The following represents overall comments prepared by the Ryerson City Building Institute regarding Bill 108 and the Housing Supply Action Plan. Comments pertaining to amendments to the Development Charges Act can be found on pages 2 and 4-6 of this document, and in the concluding comments on page 9.*

## About this Submission

This submission has been prepared by the Ryerson City Building Institute in response to the recently introduced Bill 108, the More Homes, More Choices Act, 2019, and its companion policy, The Housing Supply Plan. Bill 108 is an omnibus bill that will affect 13 existing provincial statutes, and as proposed will have far-reaching impacts on the planning and development process, environmental protections, and on the affordability and livability of the province as a whole, and in particular rapidly intensifying municipalities like Toronto.

Many important implementation details, including accompanying regulations, have not been provided by the Province. In the absence of this critical information, and given the brief timeline provided for comments on these extensive proposed changes, it is not possible to comprehensively assess the impacts of this policy and legislation. Accordingly, this submission includes initial comments on key measures as proposed, and highlights positive aspects, key concerns, and recommendations.

## Introduction

The stated objective of the Housing Supply Action Plan and related Bill 108 is to build more housing supply in the right places, to make housing more affordable, and to save taxpayers money. However, the legislation as proposed appears to emphasize only strategies to build more housing supply -- more quickly and at a lower cost -- without directly addressing affordability.

In the absence of targeted mechanisms to ensure that savings from expedited approvals and reduced development costs are passed on to end users (both renters and homeowners), it is unlikely that the Housing Supply Action Plan and Bill 108 will improve housing affordability while also targeting the lack of housing options, including missing middle and family sized multi-unit housing. What is proposed may, in fact, reduce livability and affordability throughout the province -- particularly in areas facing intense growth pressure -- by limiting municipalities' ability to collect revenues necessary to support growth-related capital and community infrastructure, and further constraining municipal budgets.

## Development charges constrained, delayed, and uncertain

There are a few positive changes proposed to the *Development Charges Act*, including new exemptions for secondary suites in newly built homes (Subsection 2 (3.1)), and the inclusion of full capital costs for waste diversion services as expenses eligible for development charges (DCs) (Section 1). However, the bulk of the changes proposed are likely to constrain municipalities' ability to fund and deliver critically-important capital and community infrastructure to serve the needs of growing populations across the city.

Bill 108 will limit the services for which development charges can be imposed, notably removing parks and community infrastructure - including "soft infrastructure" such as park improvements, recreation facilities, childcare, libraries, and pedestrian infrastructure - from the list of DC-eligible expenses (Subsection 2 (4)). Instead, these charges will be rolled into a new Community Benefit Charge (CBC). In the context of intense development, this will limit municipalities' capacity to create livable communities, with sufficient parks, recreation facilities, and community infrastructure to meet growing needs. (For more analysis, see section below on the Community Benefits Charge).

Bill 108 also proposes changes that would see DCs calculated and frozen at an earlier date in the development process (at site plan or rezoning approval), and payable later (at building permit issuance) (Subsection 26.2 (1)). Further, certain types of development, including rental housing, institutional, industrial, commercial, and non-profit housing, would be eligible for a deferred payment schedule, beginning at occupancy and continuing in annual instalments over five years. Without clear definitions of these types of development (for example, does rental housing include only purpose-built rental? Or also secondary rental?), it is difficult to assess the implications of this change, and if it would indeed support housing affordability.

What is clear is that altering the timeline of DC calculations and collections may lead to uncertainty and delays for municipalities charged with providing necessary services to growing communities. Municipalities may be obligated to finance and build new growth-related capital infrastructure for anticipated development many years before the associated DCs are actually collected, increasing public debt and risk.

Finally, the impact of these changes on affordability for end users is unclear. While developers are likely to benefit from reduced DCs and other community benefits contributions, earlier calculations, deferred payment schedules, and increased certainty overall, there are no clear mechanisms proposed to ensure that these financial benefits are passed on to homebuyers or renters in the form of more affordable housing prices.

## Putting endangered species at risk

Proposed changes to the Endangered Species Act will roll back existing protections and further endanger at-risk animals and plants in Ontario. The new Species at Risk Conservation Fund (new sections 20.1 - 20.18) would allow developers to bypass the conventional approvals process and receive authorization for activities that would otherwise be prohibited under the Act. While the stated objective of the new Fund is to support activities and research to protect species at risk, this loophole would essentially allow developers to submit cash in lieu in order to sidestep regulatory processes and override existing prohibitions that are critical in protecting at-risk plant and animal species.

Further, the species classification criteria is amended to allow species that are at-risk in Ontario but otherwise safe in another jurisdiction to be de-listed (new subsection 5(4) and 5(5)). This change ignores broadly understood concepts of bioregional ecology, and does not reflect how complex ecosystems function.

These proposed changes, along with others, could allow encroachment onto sensitive lands and habitats where development would otherwise undergo a fulsome regulatory review and be subject to extensive restrictions or outright prohibitions. This could expedite development into protected areas, to the benefit of existing land owners and to the detriment of Ontario's wildlife, ecology, and natural heritage systems and drinking watersheds.

## A new (old) LPAT and a more adversarial planning process

Bill 108's proposed amendments to the LPAT Act reverse changes enacted just two years go with Bill 139, the Building Better Communities and Conserving Watersheds Act, which was developed through extensive community and stakeholder consultation. The changes as proposed will revert back to a process similar to the former OMB: repealing Bill 139's two-stage appeals process, and reinstating the single de novo hearing in which the LPAT will consider matters upon appeal, without using a municipal council's decision as the starting point for consideration. The grounds for appeal will be broadened beyond consistency and conformity with provincial policies and plans, giving the LPAT authority to interpret what constitutes "good planning" and to overrule municipal decisions, even if those decisions conform to provincial policies and plans. After a single LPAT hearing and decision, there will be no requirement for a matter to return to council for consideration. Further, there will be new limits placed on third-party appeals by the public, and existing limits on the extent of examination and cross-examination of witnesses will be lifted (Section 33 (2.1)).

Taken together, these changes to the appeals process may undermine the plan-making authority of municipalities, and also limit the ability of the public to participate meaningfully in the development process. And while the stated goal of these changes is to expedite the planning process, they may in fact lead to a more adversarial planning process and encourage more hearings at the LPAT, which are time-intensive and costly for both municipalities, developers, and third-party participants (where permitted). Further, coming so soon after Bill 139's overhaul of the appeals process in 2017, these changes add further uncertainty to the development process and may delay the delivery of housing to market.

## Heritage properties threatened

The proposed changes to the Ontario Heritage Act will alter how and when decisions under the Act are made, and may threaten municipalities' ability to preserve and protect heritage buildings and resources. Bill 108 will broaden the range of decisions regarding the designation of heritage properties that can be appealed directly to the LPAT for a final decision. This will allow appeals to bypass the existing Conservation Review Board, which makes recommendations to Council, and go directly to the LPAT, which has power to overturn decisions of Council. Section 27 of the Act is amended to grant property owners the right to object to a municipality's proposal to list a property on the heritage register, and Section 32 is amended to allow property owners to appeal the LPAT any subsequent by-law to designate that property. Further, a new Section 20.0.1 is added that would require municipalities to consider principles prescribed by the Province, through regulation, when making decisions regarding heritage properties (though the details of these principles have not yet been released). New, shortened timelines for notices and decisions are also proposed in amendments to Section 29.

These changes may limit municipalities' decision-making authority and capacity to lead more consultative and time-intensive decision-making processes regarding heritage properties, as adhering to new requirements and timelines for listings, designations, and demolition permits may be administratively burdensome. Together with new rights of property owners to object to listing proposals and and appeal designation decisions directly to the LPAT, these changes could place undue power with the LPAT to make decisions regarding heritage, and hasten the loss of properties of heritage value.

## Overhauled Planning Act threatens livability and affordability

### New Community Benefits Charge hinders community building

One of the most significant changes proposed in Bill 108 is the creation of a new Community Benefits Charge (CBC), replacing existing Section 37 (density bonusing) and impacting existing Section 42 (parkland dedication) provisions. Under these changes, Councils would have the power to impose a CBC on new development to recover costs for community benefits, services, and facilities, including park development and maintenance as well as some social infrastructure no longer eligible for development charges (Subsection 37 (3)). CBCs would be tied to a percentage valuation of the property to be developed, and forthcoming legislation is set to introduce a maximum specified rate (Subsection 37 (12)).

Bill 108 also amends Section 42 to eliminate the alternative rate for parkland dedication and instead impose standard parkland dedication rates of 5% for residential development and 2% for commercial/industrial sites. However, under the new Subsection 42 (2), enacting a new community benefits charge by-law would preclude municipalities from maintaining a parkland dedication by-law -- in effect, forcing municipalities to choose between requiring on-site parkland dedication or collecting broader community benefits funds, through which parkland costs may be addressed.

These changes as proposed are extremely concerning, as they erode existing mechanisms that are used to fund growth-related community infrastructure, offset the impacts of new development, and ensure communities have access to the parks, facilities, and services that support livability.

Bill 108 will likely reduce the amount - in terms of dollars, space, and parkland - that municipalities can extract from new development to offset its impacts. Particularly in dense, growing neighbourhoods, Bill 108 will likely limit the provision of new parkland on-site, while also constraining municipalities' ability to purchase new space for parkland. Without sufficient funds to support these important city-building endeavours, the result will be tall, dense neighbourhoods without appropriate facilities, parks or public space, and infrastructure to ensure their livability.

This is compounded by the new requirement under Subsection 37 (27) that 60% of funds collected must be spent within the calendar year, which will cripple municipalities' capacity to accumulate significant funds over time to invest in major public infrastructure projects, such as Rail Deck Park in Toronto.

An across-the-board cap on CBC charges (the regulations for which have not yet been released) will undermine municipal authority to determine the rates necessary necessary to meet local community needs and capital infrastructure goals. Further, the concept of calculating community benefits charges based on a percentage of land value, rather than also considering a project's number of units or density, is troublesome. In lower-density parts of the region, the proposed community benefits calculation based on a site's land value may positively encourage more density where it is needed in urban growth centres, along transit corridors and major transit station areas. However, in higher-density areas like Toronto, it will likely encourage the building of denser and taller multi-unit housing, rather than much-needed medium density housing, to offset the cost of CBCs tied to high land values. The net result may be significant reductions to parkland and community facilities, while encouraging denser developments that add more residents per site.

Overall, these changes are expected to have negative financial implications for municipalities. Limiting growth-related revenues and community benefits from new development could force municipalities to recuperate lost revenues through other available sources, including existing residents and businesses through property taxes. Municipalities may also be forced to adjust spending in other areas, including on the provision of affordable housing.

It also must be emphasized that Bill 108 does not include any clear mechanisms to ensure that the reduced development costs facilitated by this legislation are actually passed on to end users - both homebuyers and renters - in the form of heightened housing affordability.

Measures to address the provision of parkland, community facilities, and infrastructure to serve the needs of growing populations should reflect the unique circumstances of communities across Ontario. Parkland dedication policies that encourage greater site densities are appropriate in low-density areas of the region, where there is a need to drive more intensification to urban growth centres, transit corridors and major transit station areas. However, in already dense urban areas, this same proposed parkland contribution based on site area would encourage denser, taller development and a higher number of residents per site with a reduction in parkland contribution per resident. Much of downtown Toronto, for instance, is park-starved, and policies should encourage density to be distributed, and strive for parkland provision rates or cash-in-lieu is needed to appropriately meet the needs of growing populations. The new Community Benefits Charge and changes to the parkland provision system does not reflect the diversity of circumstances and needs in communities throughout Ontario, and instead imposes a blanket policy that could indeed have negative impacts on both urban and suburban communities.

## Shorter decision-making timelines encourages more appeals

In an attempt to expedite the approvals process, Bill 108 amends Sections 17, 22, and 34 of the Act to shorten timelines for the municipal review of development applications, zoning by-law amendments, and OP/OPA amendments -- timelines that were lengthened under Bill 139, just two years ago, in response to extensive community and stakeholder consultation. These new changes will empower applicants to appeal to the LPAT if a municipality fails to make a decision within the prescribed timeline of 90 or 120 days (depending on the application type).

In rapidly growing cities like Toronto, City Planning staff already manage an extremely high volume of applications, and are challenged to review and consult appropriately. The shortened timelines are likely to result in more appeals to the LPAT for non-decision, and an overall more adversarial and less collaborative development process. While the stated goal of these changes is to speed up approvals and bring housing to market faster, they could encourage more appeals overall, which are risky, time-consuming, and may further undermine municipal plan-making authority.

## A mandatory Development Permit System

While municipalities have had the power to enact a development permit system since 2007, Bill 108 would revise Section 70.2.2 to grant the Minister of Municipal Affairs authority to *require* municipalities to implement a DPS in specific geographic areas, likely in MTSAs and provincially significant employment zones. While the Province cannot dictate the specific policies contained within a DPS, the Province would have power to appeal a municipality's DPS to the LPAT if it is believed to not conform to provincial policy.

The DPS is intended to enhance the certainty and speed of the development process by allowing cities to establish zoning, site plan, and minor variance approvals in advance through a single regulatory process, and also by limiting appeals to the LPAT. However, the system brings with it a number of challenges. The planning required to develop and implement a DPS system is onerous, and sure to be a challenge for City Planning departments that are already under-resourced. Once in place, a DPS cannot be appealed by a municipality or third party, and there are limits to site-specific appeals, which could limit participation in the development process. Finally, the DPS has been criticized for its potential to deliver overly-prescriptive planning, and to limit innovation by landowners and developers.

Overall, the DPS is an important tool through which municipalities can seek to provide clear direction for all parties - councils, developers, and community members - as to the planning and zoning rules in a defined area, and what development should be permitted. When used appropriately, the DPS could result in expedited development approvals in key areas. However, it is important that municipalities retain the power to identify the locations in which a DPS should be implemented, and authority to determine the content of the policies contained within the DPS.

### More delays for inclusionary zoning

Bill 108 introduces new changes in Subsection 16 (5) that will limit local governments' ability to establish inclusionary zoning by-laws and policies, and narrow their application only to areas around major transit station areas (MTSAs) and areas in which a development permit system (DPS) has been established. The changes also give the Minister of Municipal Affairs the authority to demand that an area be subject to inclusionary zoning. This is a departure from the current system, which grants municipalities authority to determine the geographic boundaries of an inclusionary zoning by-law, based on an analysis of housing need and financial impacts.

As the City of Toronto has already assessed locations and developed proposed policies for an inclusionary zoning by-law, the City has expressed concerns that these new changes to link inclusionary zoning to only MTSAs or DPS areas will further delay the introduction of inclusionary zoning. The delineation of new MTSAs and the creation of new DPS areas both require extensive analysis and approval, which is expected to cause further delays.

By altering the parameters and process for establishing inclusionary zoning by-laws, and limiting their application to prescribed MTSA and DPS areas only, these changes may delay the implementation of inclusionary zoning, and the provision of new affordable housing as a result.

### New requirements to permit additional units are a positive step

Included amongst the many proposed changes to the Planning Act is an amendment to Subsection 16 (3) that would require municipalities to authorize additional residential units in both primary dwellings *and* ancillary structures for detached, semi-detached and row houses. Previously, secondary units could only be provided in *either* the primary dwelling *or* the ancillary structure. This is a positive proposal, that supports the expansion of housing options in existing residential neighbourhoods, without requiring extensive zoning change or construction.

## Sale of public land is short-sighted and a missed opportunity

Ontario's recently released Housing Supply Action Plan highlights a number of Provincial actions already underway to address Ontario's housing crisis, including the sale of unused public lands across the province. In the Plan, the continued provincial ownership and maintenance of these properties is portrayed as a "waste" of taxpayer dollars, and their sale as a move that will support the building of more homes, long-term care facilities, and affordable housing.

This is a short-sighted view of the value of public lands, and could lead to the disposition of millions of dollars worth of publicly-owned land from which public value could be derived for decades to come.

The sale of public land should be avoided, and public agencies should focus their efforts on leveraging public land for maximum, long-term community benefit -- including for the provision of affordable, attainable, and market-rate housing supply. Working with the private sector on long-term leases or joint developments while retaining public ownership of all or a portion of the properties could generate long-term revenue from rents, leases, and sales, which could in turn help to fund public services, transit, parks, maintenance of public land and the provision of more affordable housing.

Public land can and should be leveraged for long-term benefits to both the public and private sector, and there are inspiring examples both in Ontario and abroad where this has been accomplished. Joint developments and/or public land leases between public agencies and private or non-profit developers have been highly successful in cities such as New York, Denver, Vancouver, Singapore, Hong Kong, London, and Montreal, particularly on public lands near transit stations. Public agencies can alleviate the high cost of land typically associated with development and draw upon private sector expertise in delivering new housing to deliver a range of housing outcomes, including a range of unit sizes, tenures, and affordability. By retaining its ownership of public land, the province could leverage developers as city builders and work in partnership to achieve affordable housing objectives while optimizing the utility of public lands in perpetuity.

## Building Code efficiency measures should be enhanced, not dismantled

The Housing Action Plan also highlights proposed changes to the Ontario Building Code, including plans to remove the requirement that all new homes much include electric vehicle charging infrastructure; and plans to harmonize Ontario's Building Code with other national codes to reduce barriers to interprovincial trade, provide more certainty for manufacturers, and bring overall building costs down.

Currently, Ontario's Building Code is leading the way in Canada in terms of measures to reduce greenhouse gas emissions and to encourage energy efficient building practices. At a time when measures to address climate change are absolutely critical, the Province should be working to enhance -- not dismantle -- elements of the Code that encourage the building of more energy-efficient homes. Not only can the Building Code support Ontario's climate goals, but energy efficiency measures in the Code make strong fiscal sense for both developers and homebuyers, as energy costs contribute significantly to housing costs and to homeowners' and renters' energy bills.

While the details of the proposed changes to harmonize the Ontario Building Code have not yet been released, the Province should instead be exploring options that would further support green building in Ontario, such as encouraging innovation in energy efficient mass timber construction (a measure already highlighted in the Housing Action Plan) and supporting other energy-efficient building innovations, such as modular construction.

## Conclusion: Bill 108 limits the affordability and livability of Ontario's communities

Taken together, the sweeping changes to Ontario's planning and development system as proposed in Bill 108 and the Housing Supply Action Plan are likely to reduce the livability of dense, urban neighbourhoods like Downtown Toronto and other high-growth areas across the region, while facilitating sprawl in suburban areas. While this legislation supports the building of more housing supply across the region, it is not clear how this supply will result in greater affordability and not simply feed developer revenues and investor demand. Flooding the market with oversupply is not a prudent or sustainable approach, nor does it address the critical need for a range of affordable housing, from subsidized to middle income. Overall, these changes are unlikely to meaningfully enhance affordability for Ontarians.

By loosening development restrictions, particularly through changes to the Endangered Species Act in combination with changes to the Growth Plan, Bill 108 and the Housing Supply Action Plan may encourage more sprawl, at a time when transit-oriented development and intensification in our already urbanized areas is most needed. The cost of sprawl for municipalities forced to build infrastructure and services for newly-developed lands has been well-documented, as are the costs to individual homeowners of relying on personal vehicles and long commutes to travel from the suburban fringe to jobs in the downtown core. It is clear that Ontario cannot sprawl its way to affordability.

In denser, urban areas, it is also clear that Ontario cannot simply build its way to affordability either, without clear mechanisms to deliver the right housing supply in the right places, matched with appropriate funding for community services and infrastructure. The new Community Benefits Charge and related changes are likely to reduce municipalities' ability to collect the growth-related revenue and benefits necessary to fund infrastructure, community amenities, and services critical to meet the needs of growing populations. These policies may also drive even more density into core areas, rather than encouraging distribution through middle- and gentle-density intensification. With more residents and less development revenue and parkland in high-growth communities, already dense and park-starved areas like downtown Toronto are likely to become less livable.

At this time of growth across the province, municipalities need access to more - not fewer - resources and funding tools to support the creation of basic infrastructure, community services, parks and public realm to accommodate this density. By limiting municipalities' capacity to access necessary funds, Bill 108 will likely download these costs further to municipalities, forced to raise revenues from existing residents through property taxes or other taxes, thus increasing monthly housing costs for residents. This could hinder - rather than advance - housing affordability for homeowners and renters alike.

Finally, while Bill 108 and the Housing Supply Action Plan place a great deal of focus on streamlining and expediting processes and reducing fees for developers, there are no clear mechanisms proposed that would ensure that these savings are in fact passed on to homeowners and renters. This legislation offers clear benefits for some developers and landowners, but how it will meet its stated objective to advance housing affordability is unclear.

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At the Ryerson City Building Institute, we envision a future in which all cities are prosperous, equitable, environmentally sustainable and resilient. In collaboration with the Ryerson community and external partners, we produce public policy research and share insights addressing diverse urban challenges to promote healthy neighbourhoods, cities and regions, starting with the GTHA. We are recognized for our accessible approach to knowledge mobilization, our multi-disciplinary perspective, and for providing leadership and dialogue that motivates action on important issues.

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