



May 31, 2019

Planning Act Review
Provincial Planning Policy Branch
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Re: ERO 019-0016 and ERO 019-0017: Bill 108 – (Schedule 3) and (Schedule 12) – the proposed *More Homes, More Choice Act, 2019: Amendments to the Development Charges Act and the Planning Act*

Kindly accept this letter on behalf of the General Manager, Community Development for the City of Brantford in response to proposed amendments to the *Development Charges Act, 1997*, and *Planning Act, 1990* through the Ministry of Municipal Affairs and Housing (MMAH) *Bill 108: More Homes, More Choice Act, 2019* (referred to as “Bill 108”).

In light of the tight deadline set by the Province, we are not able to provide you with an official resolution from City of Brantford Council. Accordingly, this letter is provided to you as input to your public consultation process and a letter and related Report, accompanied by a Council Resolution will follow by the end of August 2019, which is the earliest we can take a Report to Council.

City staff supports the objective of creating more homes, a greater mix of housing opportunities and the making housing in Ontario more affordable for both homeowners and tenants. However, we do have some concerns with the Bill in its current form. This letter summarizes comments and concerns from City of Brantford Staff.

Bill 108 Amendments to the *Planning Act*

Reducing Decision Timelines for Council Decisions on *Planning Act* Applications

Amendments to the *Planning Act* propose to reduce the timelines for Council to make decisions on applications to amend the Official Plan, Zoning By-law and for Draft Plan of Subdivision approvals. City of Brantford Staff has concerns with the proposed reduction in timelines as they will reduce Council’s opportunity to engage with the public in such applications. Further, the reduced timelines as proposed may also lead to an increase in the number of appeals to the Local Planning Appeal Tribunal (LPAT) as Council may not be able to make informed decisions on complex development applications within these reduced timeframes thereby requiring additional staff, financial, and legal resources to deal with each appeal. Ultimately, the proposed amendment impedes public input and constrains the local decision-making process.

Staff would recommend that the current timelines under the Planning Act be retained to and greater emphasis be placed on the “pre-consultation” stage of the process to provide clarity to the timelines by placing the onus on the development industry to ensure that applications are submitted with the appropriate required information and the supporting information/reports are prepared by qualified professionals.

Changes to the Local Planning Appeal Tribunal (LPAT)

Under the current LPAT practice and procedure, Council’s decisions carried more weight and appeals to those decisions were only limited to non-conformity with a municipality’s Official Plan or non-conformity with the Provincial Policy. As proposed under Bill 108, a return to *de novo* hearings opens the door to new evidence being submitted at LPAT hearings which may not have been considered at the Council decision stage. This is of concern as applicants could hold back information through the planning process and then raise such information at the LPAT hearing, when both the public and Council are no longer involved. Brantford Staff have significant concerns with the proposed changes to the LPAT as they could override local municipal decisions, and future LPAT decisions could overlook the goals of the PPS, and the City’s Official Plan.

Bill 108 also proposes to remove the rights of certain persons (limitation on third party appeals) ability to appeal a decision. Third party appeals by a person or public body can no longer be made to the approval authority’s decision on a draft plan of subdivision and on non-decisions for Official Plan amendments. This legislation would also remove participants’ right to make oral submissions at a hearing and instead limit them to written submission. Further, it would allow the LPAT to limit examination and cross-examination of witnesses at a hearing and also empower them to direct the parties to participate in mediation or other forms of alternative dispute resolution. Staff is supportive of granting LPAT the authority to require parties to participate in mediation or dispute resolution prior to scheduling a hearing. The City currently has some LPAT appeals and there have been no details provided in Bill 108 on the transition rules that may apply.

Staff would recommend that the current two step appeal process be maintained to ensure that local decisions are retained and that appeals should be limited to ensuring that applications are consistent with provincial plans and in conformity to the local Official Plan. Finally, the right of appeal for those who participate in the Planning process should be maintained.

Secondary Dwelling Units

Bill 108 proposes to permit secondary dwelling units as of right in any single detached, semi-detached or row house AND in an accessory building. This could permit up to 2 secondary dwellings per lot. Current regulations do not permit secondary dwellings as of right in both the principal dwelling and accessory structure at the same time.

The City of Brantford currently has Official Plan policies and Zoning By-law regulations in force respecting secondary dwelling units and they are only permitted in certain zones and are limited to the ground floor of an accessory building. City of Brantford Staff are of the opinion that permitting secondary dwelling units as of right in both the principal dwelling and the accessory structure without any zoning amendment process could now introduce other neighbourhood concerns related to compatibility, privacy, and fit without the appropriate evaluation of the proposed development.

New Community Benefits Charge (CBC) – Section 37 of the *Planning Act*

One of the most significant amendments of Bill 108 is that it proposes to replace Section 37 of the *Planning Act* which currently permits density and height bonusing provisions in exchange for community benefits (facilities, services or matters prescribed in the by-law) with a new Section 37 which would introduce a Community Benefits Charge (CBC).

The proposed new Section 37 would allow municipalities to impose community benefit charges against land, to pay for the capital costs of facilities, services and matters required as a result of development within an area to which a community benefits charge by-law applies. This amendment no longer relates to planning permissions for greater height and density.

The CBC would apply to planning approvals respecting zoning by-laws, zoning by-law amendments, minor variances, consent, plans of subdivision and condominium, and building permits. Although this new authority will not be mandatory for municipalities, given the proposed amendments to the *Development Charges (DC) Act* outlined below in this letter, by default, municipalities will likely need to undertake a CBC strategy and by-law in order to fund soft services. This amendment would provide authority for municipalities to prepare and pass a CBC strategy and by-law and also identify facilities, services, and other services/matters to be funded with the charge. The new process proposed governs a municipality's collection of CBC's by establishing a special fund/account with a mandatory requirement for the City to spend or allocate 60% of the funds annually. The legislation also identifies certain land use exemptions from a CBC; it is quite unclear as to what uses would be exempted. Further, the proposed legislation will cap CBC's (at a yet to be specified percentage) of land value of development. The amendment will also allow the development industry/land owner to provide in-kind contributions to municipal facilities or services instead of payment. Lastly, the amendment also includes a provision to which a land owner can also appeal the value of the charge applied to their land.

City of Brantford Staff has many concerns with this proposed amendment as the details and components related to the implementation of the CBC have not been provided by the Province. The ability to recover soft service costs and parkland and understanding what the real financial impact to municipalities will not be known until these are released.

Parkland Dedication

The proposed change to Section 37 could replace parkland dedication in some cases if a CBC by-law is passed by a municipality. The amendment provides that if a CBC by-law is passed and in force, the municipality cannot require the dedication of parkland or the payment of cash in lieu under Section 42 of the *Planning Act*. Further, if this proposed amendment is approved; the City would no longer be able to require an alternative rate for parkland (i.e. only 2% and 5% rates can be used). Once Bill 108 is in effect, plans of subdivision which are approved with a condition relating to the conveyance of parkland would not be subject to a CBC by-law. Many amendments are also proposed to Section 51.1 of the *Planning Act* as it relates to parkland conditions which may be applied to the approval of a plan of subdivision or consent. However, if parkland dedication is imposed as a draft plan condition, the municipality cannot collect a CBC in respect of the lands in the subdivision for soft services.

City of Brantford Staff has concerns with the proposed changes impacting parkland dedication. This amendment will impact the overall funding to secure parkland through the development process. Staff recommends that parkland should not be subject to the CBC provisions and that the current parkland dedication provisions in the *Planning Act* should remain, even if a CBC by-law is in effect. Staff's concerns are that the City would be at loss in providing an appropriate amount of parkland for residents if a CBC by-law is in effect. To clarify, if a municipality chooses to implement a CBC by-law, only some of the CBC funds could be utilized for park acquisition, which means that if additional lands are necessary for adequate parkland, the City would be required to purchase those additional lands more frequently than it already may have to do.

Development Permit Systems

Bill 108 proposes to expand the Minister's powers to direct municipalities to use an existing tool known as the Development Permit System (DPS). The DPS is intended to streamline planning approvals by combining zoning, site plan and minor variance approvals into a single regulatory process. While the *Planning Act* has permitted municipalities to implement a DPS since 2007, the majority of municipalities in Ontario have not chosen to do so. The proposed amendment would give the Minister the authority to issue an order that requires a municipality to implement a DPS in a specific geographic area, within a stipulated period of time. The DPS could apply to provincially significant employment zones. We further understand that the official plan policies or by-laws implementing a provincially-mandated DPS would not be subject to appeal, except by the Minister.

The City would require more detail on this amendment to fully understand the potential benefits or impacts to the City of Brantford.

Discretionary Use of Inclusionary Zoning

Bill 108 proposes to narrow the circumstances in which municipalities can use inclusionary zoning to require developers to provide affordable units as part of market-rate developments. Under the existing legislation, the Minister has the power to identify, through regulation, certain municipalities that are required to implement inclusionary zoning. In addition, those municipalities that are not required to implement inclusionary zoning may voluntarily do so. Municipalities that choose to implement inclusionary zoning currently have the authority to determine *where* within its borders inclusionary zoning would apply. However, under Bill 108, that discretion would be removed. Specifically, if Bill 108 is enacted as proposed, municipalities that voluntarily choose to implement inclusionary zoning may only do so in two areas:

- Major Transit Station Areas; and
- Areas where the municipality has established a DPS system (in response to a Minister's order).

This change would significantly limit the scope for municipalities to enact by-laws with inclusionary zoning requirements. Official plan policies and zoning by-laws implementing inclusionary zoning would not be subject to appeal, except by the Minister.

Bill 108 Amendments to the *Development Charges Act*

Bill 108 proposes to narrow the range of services for which development charges can be imposed to align with the new CBC, as described above in this letter. Since soft services are to be funded through the CBC, under proposed legislative changes, DC's could only be imposed for certain hard services, such as water, wastewater, stormwater, road, transit, electrical power, policing, fire protection and water diversion.

It is proposed that a municipality may, by by-law, impose CBC charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the CBC by-law applies. These services may not include services authorized by the DC Act.

More information is needed, as there are several key items to be included as part of the regulations. For example, what items are to be included in the CBC strategy and what percentage of the "value of land" is to be eligible for collection; this is unknown. Depending on what is to be included in the CBC strategy; this may be undertaken at a similar time as the DC background study. As noted, it is unclear as to the prescribed items to be included along with the process or methodology required to adopt the CBC strategy and by-law.

There are also concerns regarding what prescribed percentage of the land value will be allocated for the charge. If the same percentage is provided for all of Ontario, then a single detached lot in Toronto valued at \$2 million will yield 20 times the revenue of a \$300,000 lot in Brantford. Given that building costs for the same facilities may vary geographically, the CBC could yield nominal funds to pay for required services for municipalities outside the Greater Toronto Area. Further, given the need for appraisals and the ability of the applicant to challenge the appraisal (as there is no appeal process), a charging system based on land values will be extremely cumbersome and expensive. It is unclear how appraisal costs are recovered, and the appraisals may become a significant cost on each individual property. More clarification is required before municipalities can determine the potential benefits or impacts as proposed.

Transitional Timelines

Transitional timelines are unclear as it relates to Development Charge (DC) By-laws under the current framework, and the City requires additional information. Staff would suggest an appropriate and reasonable transition period apply to address the changes and ensure that the City can continue to recover for growth related costs while also providing assurances to the development community.

Determining the DC Amount

Bill 108 also proposes to change the timing and method for calculating the DC's owed on a particular project. Currently, DC's are paid at the time of the issuance of a building permit and are calculated based upon the current rate in effect. Bill 108 would fix the DC rate at the time of site plan application is submitted or if not required at the time the zoning amendment application is submitted.

City of Brantford Staff have concerns with these proposed changes because if the development is not proceeding via these planning approvals, then the amount of DC's payable is fixed at a potentially much lower rate than if they were paid at the time of building permit issuance or occupancy which would restrict the City's ability to use those DC monies. Locking in the DC

rates well in advance of the building permit issuance would produce a shortfall in DC revenue, as the chargeable rates will not reflect the current rate as of the time the development proceeds to full build out. There should be a time limit on how long the development takes to move from site plan control approval, or zoning by-law amendment, to the issuance of a building permit. The Bill also proposes to exempt second dwelling units in new homes from paying DC's. This is problematic as second dwelling units ultimately result in new households and creates additional demands on municipal services and infrastructure.

Payment in Installments Over Six Years

The Bill also proposes that rental housing, non-profit housing and commercial, industrial, institutional developments may pay DC in six equal annual payments commencing the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier. Staff is concerned that this may create financial constraints to the municipality regarding the delivery of infrastructure and services within currently identified forecasted timelines.

As the proposed changes to the Act are to facilitate the Province's housing agenda, it is unclear why these installment payments are to be provided to commercial, industrial and institutional developments. Staff recommends removing commercial, industrial and institutional developments from this proposed amendment. The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing, commercial, industrial, and institutional development building permit will cause a tremendous administrative burden on municipalities and DC that are required to assist with the funding of services will be impacted by the delayed payment.

Conclusion

Bill 108, *More Homes, More Choices Act, 2019* proposes significant changes to much of the legislation that applies to planning and development in Ontario. While staff is supportive of making housing more affordable, providing more housing choices and making them more available to Ontarians, the proposed Bill raises many concerns and is unclear to what the actual financial impact will be on municipalities who will be required to implement these new programs.

Bill 108 proposes significant changes and the commenting period of only 30 days is inadequate to provide a fulsome review and report to Council and obtain their feedback to meet the June 1st deadline for submitting comments. I would request that the Province allow additional time for municipalities to consult on this proposed Bill and ask that any comments received after the June 1st deadline is considered as official comments on the proposed Bill.

I appreciate the opportunity to provide comments on the proposed changes through Bill 108. Please feel free to contact me you have questions or require any further information. I can be reached at pmoore@brantford.ca or at 519-759-4150, ext. 5488.

Yours truly



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