



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	May 21, 2019
<b>From:</b>	Karen Ellis, Director of Planning
<b>Report Number:</b>	Planning 2019-24
<b>Subject:</b>	Bill 107 and Bill 108

### Recommendation:

That Report Planning 2019-24 be submitted to the Province as the Township's submission regarding Bill 107, The Getting Ontario Moving Act, and Bill 108, The More Homes, More Choices Act, 2019.

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### Overview:

On May 2, 2019, the Province of Ontario introduced Bills 107, The Getting Ontario Moving Act, and Bill 108, The More Homes, More Choices Act. Bill 107 proposes updates to a number of road safety rules and allows the province to assume ownership over Toronto's subway infrastructure. Bill 108 outlines the government's plan to tackle Ontario's housing crisis by finding faster ways of getting a greater mix of housing supply on the ground.

Comments on the draft legislation are welcomed by the Province until June 1, 2019.

Links to the proposed legislation are as follows:

Bill 107: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-107>

Bill 108: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-108>

Links to the Schedules for each piece of legislation affected by the proposed changes in Bill 108 can be found on page 9 of the Bill.

Bill 108 contains initiatives from various ministries. The 30 day review period did not provide Staff sufficient time to review all aspects of Bill 108. As such, Report Planning 2019-24 focuses on the proposed legislative changes that are likely to have the greatest

impact on the Township of Cavan Monaghan. The comment section of the Report is organized by legislation (i.e. Planning Act, Development Charges Act, etc.).

The Township is very supportive of removing red tape and/or duplication pertaining to economic development and job creation in Ontario while respecting the policies and regulations of The Planning Act, The Development Charges Act, and the Conservation Authorities Act etc. The comments contained herein are the result of Staff's (C.A.O., Economic Development, Public Works, Planning and Building) review and discussion of the proposed legislative changes and other available information like 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, and the Watson & Associates Letter dated May 6, 2019. The AMO information is provided as Attachment No. 1 to this Report and the Watson Letter is provided as Attachment No. 2.

<b>Proposed Changes</b>	<b>Comments/Suggestions</b>
<b>Planning Act</b>	
<p>Appeals no longer exclusively based on inconsistency with the Provincial Policy Statement (PPS), non-conformance or conflict with a provincial plan (i.e. Growth Plan) or failure to conform to an Official Plan.</p>	<p>Concern that municipal decisions on planning applications will be given less weight or totally disregarded in the determination of “best planning outcome”. Planning staff rely on local policies and regulations, and provincial policies and plans when evaluating applications and development proposals. The question of what is good planning is also used. With the proposed changes to the appeals process, what constitute good planning for a local municipality is no longer in the care and control of that municipality.</p> <p>Unclear how returning to “de novo” hearings will streamline appeals process.</p>
<p>Timeframes for municipal processing of development applications (i.e. official plan amendment, zoning by-law amendment) are reduced as follows:</p> <p>OP/OPA            210 days to 120 days  ZBA                    150 days to 90 days  Subdivision        180 days to 120 days</p>	<p>Concern that the timeframes are too short to permit a thorough review of the application and supporting documentation. Reduced timelines can also affect the public’s ability to fully participate in planning process. Changes will create stress on an already overloaded review and administration process.</p>

<p>Rights of appeal on a draft plan of subdivision, lapsing provision or condition of draft plan approval limited to only the applicant, municipality, Minister, public body or prescribed list of persons.</p> <p>Permits two residential units in detached, semi-detached or row houses, and one residential unit in an ancillary building structure. The collection of Development Charges for this type of housing will not be permitted.</p> <p>Replacement of density and bonusing provisions with a community benefits charge system. This system will allow municipalities to charge for growth related costs not covered by development charges. Contributions are to be based on the value of the land at building permit stage, subject to a maximum percentage to be set by regulation.</p>	<p>Concern that removing appeal rights compromises the public engagement process and environment. Support the idea of moving the development process forward to provide more housing options. LPAT should use available tools to dismiss frivolous appeals to reduce delays.</p> <p>Support in principle. Concern that this change is more suited to urban environments will municipal water and sewer services. Potential impacts from additional units on smaller lots with private servicing. Effects on the natural environment, parking, outdoor amenity space, school spaces, recreational facilities and servicing allocations need to be considered. Development Charge money will not be available to offset the costs of this development or to address, in a comprehensive fashion, the recreational needs, fire protection, roads and servicing, needs etc, of the Township and its residents. Recognize that change may help need for housing but need Development Charges applied to this type of development, if approved.</p> <p>More information is needed. What items are to be included in the community benefits strategy and what percentage of the “value of land” is eligible for collection?</p> <p>Clarification is required regarding the components of and lifecycle of community benefits strategy. Concern with the prescribed percentage of the land value allocated for the charge. Concern that the application of the same percentage to all of Ontario will yield nominal funds to municipalities outside of the GTA.</p> <p>How will community benefits charge be implemented in two tier system?</p>
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<p>Requirement that municipality will have to spend or allocate at least 60% of the monies in the community benefits account at the beginning of the year. Requirements for annual reporting will be prescribed.</p>	<p>Given the need for appraisals and the ability of the applicant to challenge the appraisal, a charging system based on land value will be cumbersome and expensive. How will appraisal costs be recovered The appraisal may become a significant cost on each individual property.</p> <p>Implementation of additional fee collection process will be a communication and administrative challenge. Clarification is required.</p>
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**Local Planning Appeals Tribunal (LPAT)**

<p>Ability for the Local Planning Appeals Tribunal (LPAT) to make a final determination approving, refusing to approve or modifying all or a part of the application under appeal.</p> <p>Authority for the LPAT to limit evidence at a hearing and to limit an 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.</p> <p>Mediation or other dispute resolution processes are mandatory in specified circumstances.</p>	<p>Final planning decisions are removed from elected Council's hands. New evidence can be introduced at the LPAT – evidence that the local council has not seen. This change may make hearings longer making representation at the LPAT more difficult and costly for the Township.</p> <p>Support efforts to improve efficiency of appeals process. Concern that efforts to improve efficiency by limiting evidence and cross examination may compromise decisions.</p> <p>Township supports mediation and alternative dispute resolution processes.</p>
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## Development Charges Act

Removes soft services (i.e. administrative studies, parks and recreation, etc.) from the Act. These services to be considered as part of a new community benefit charge imposed under the Planning Act.

Exempts second dwelling units in new residential buildings and the ability to exempt other classes of dwelling units as prescribed.

Provides for additional services to be included in a development charge by-law as may be prescribed.

Provides transition periods for municipalities to coordinate development charge by-law with the passage of community benefit by-laws.

Determination of DC amounts for developments proceeding by site plan or via ZBA based on the DC charge in effect on the day of the application. For other developments, the amount is determined at the earlier of the date of issuance of a building permit or occupancy.

More information is needed. What items can be included in the community benefits charge strategy and what percentage of the "value of land" will be eligible for collection? This will require a survey of appraised values to be used in different areas of the Township. Additional appraisals may be required if the charge is contested (approx. \$4,000 per appraisal). It is not clear if this cost is recoverable.

Concerned – as per comments in section related to Planning Act changes.

Support.

Support.

Locking in the DC rates well in advance of the building permit issuance will produce a shortfall in DC revenue because the chargeable rates will not reflect the current rate at the time the development proceeds. Concern with administration requirements. Clarification required.

There should be a time limit on how long the development takes to move from site plan approval or zoning change to the issuance of a building permit. There is no financial incentive for the development to move quickly to building permit. The Minister may prescribe a time period. However, if the time

<p>Allows the payment of development charges in installments over 6 years for rental housing development, institutional development, industrial and commercial development, and non-profit housing development commencing on the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier.</p> <p>Requires the amount of the charge to be calculated on the date of submission of a planning application.</p>	<p>period isn't prescribed then this would last in perpetuity. Also, this is an area of potential abuse – a minor zoning amendment could then lock down the DC rates.</p> <p>Impacts DC cash flow. As most hard services must be provided in advance of development occurring, increased debt borrowing will be required. Added debt interest will have upward pressure on the DC quantum. Concern with effects on municipal budgeting process.</p> <p>Unclear why installment payments are provided for commercial, industrial and institutional developments. This may add considerable impact on staffing needs for the Finance Department to monitor and collect. Also, there is the potential for costs to be shifted from those who take out building permits to those who own the building – if the owner is not informed of payment requirement, it will cause conflicts.</p> <p>Requirement to manage multiple year collections for each building permit issued for each rental housing, non-profit housing and commercial, industrial, and institutional development building permit will cause a tremendous administrative burden on the Township with regard to staffing requirements. This burden will be reflected in higher planning and building permit fees.</p>
<p><b>Ontario Heritage Act</b></p>	
<p>Requirement that owners of property to be included on the Register to be notified. Owner is entitled to object.</p> <p>Restriction on the demolition or removal of designated heritage buildings has been expanded to</p>	<p>Support owner's right to object. Concern with additional administrative requirements.</p> <p>Support.</p>

<p>include the demolition or removal of any designated property heritage attributes.</p> <p>Requirement that Council considers objections to notice of intent to designate a property. Timelines are applied to Council decisions.</p> <p>Restoration of traditional rights of appeal to LPAT when heritage designations are imposed on properties.</p>	<p>Timelines seem reasonable except in emergency situations. Council should retain ability to adjust timelines in emergency situations.</p> <p>Support right to appeal a designation but concern with ending Councils final say on Part IV designations. Maintain status quo with appeal to Conservation Review Board who then advises Council who make the final decision.</p>
<p><b>Highway Traffic Act</b></p>	
<p>Off-road vehicles will be automatically permitted on municipal roads in all areas of the province. Local municipalities will have ability to enact a by-law prohibiting off-road vehicles on Township Roads if they so choose. A By-law may also be enacted to restrict off-road vehicles on municipal road to specified times.</p>	<p>Support. Ability for local municipalities to prohibit off-road vehicles on certain roads or at certain times, by by-law, is necessary.</p>
<p><b>Conservation Authorities Act</b></p>	
<p>Introduction of core services concept. Core services relate to programs and services related to natural hazard risks, land management and conservation of lands owned or controlled by the authority, source water protection and other CA responsibilities under legislation as prescribed in regulations.</p> <p>Requirement for CAs to enter into a memorandum of understanding with</p>	<p>Support for maintenance of core service delivery as per legislative regulations.</p> <p>Support moves to avoid duplication. Concerned that current expertise available at</p>

municipal governments on service delivery to avoid duplication.	the CAs may no longer be available because some municipal partners are unwilling to fund the extra services. Concern with downloading of costs to municipalities. Require further detail on how a memorandum of understanding will work in a two-tier system. Clarification required.
<b>Public Transportation and Highway Improvement Act</b>	
Amendment to provide that earth grading activities in certain circumstances require a permit from the Minister.	Affects roads in the Township. Concerned that amendment creates additional red tape. Clarification is required regarding requests for permits. Provide exemptions for regular maintenance activities on local roads within 20 or 30 metres of the highway.

In closing, the Township of Cavan Monaghan supports provincial legislation that reduces duplication and provides streamlined approvals processes. The legislation must, however, recognize the importance of environmental sustainability, protect citizen engagement and respect the financial implications to and service impacts on local governments.

**Financial Impact:**

None at this time.

**Attachments:**

Attachment No. 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)

Attachment No. 2: Watson & Associates Letter Dated May 6, 2019

Respectfully Submitted by,

Reviewed by,

Karen Ellis,  
Director of Planning

Yvette Hurley  
Chief Administrative Officer



# Attachment No. 1: AMO's Initial Review of Bill 107, The Getting Ontario Moving Act, 2019 and Bill 108, The More Homes, More Choices Act, 2019

5/15/2019

AMO - AMO's Initial Review of Bill 107, Getting Ontario Moving Act, 2019 & Bill 108, More Homes, More Choices Act, 2019

## 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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## Attachment No. 2: May 6, 2019 Watson & Associates Letter



May 6, 2019

To Our Development Charge Clients:

**Re: Proposed Changes to the Development Charges Act**

The letter is to advise that on May 2, 2019, the Province introduced Bill 108 which proposes changes to the *Development Charges Act, 1997* (D.C.A.). The Bill has been introduced as part of the Province's "*More Homes, More Choice: Ontario's Housing Supply Action Plan*." The Bill has been given first reading and is expected to be debated over the coming months.

The Act proposes that any development charge (D.C.) by-laws passed after May 2, 2019 will be affected by these proposed changes. Any by-laws that were passed prior to this date will remain in effect until the by-law either is repealed or expires. A summary of the proposed changes to the D.C.A. is provided below.

**Changes to Eligible Services** – The Bill will remove “soft services” from the D.C.A. These services will be considered as part of a new Community Benefit Charge (discussed below) imposed under the *Planning Act*. Eligible services that will remain under the D.C.A. are as follows:

- Water supply services, including distribution and treatment services;
- Wastewater services, including sewers and treatment services;
- Stormwater drainage and control services;
- Services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be;
- Electrical power services;
- Policing services;
- Fire protection services;
- Toronto-York subway extension, as defined in subsection 5.1 (1);
- Transit services other than the Toronto-York subway extension;
- Waste diversion services; and
- Other services as prescribed.

**Waste Diversion** – The Bill will remove the mandatory 10% deduction for this service.

**Payment in Installments Over Six Years** – The Bill proposes that rental housing, non-profit housing and commercial/industrial/institutional developments pay their D.C.s in six equal annual payments commencing the date of issuance of an occupancy permit or occupancy of the building, whichever is earlier. The municipality may elect to charge interest (at a prescribed rate) for each payment, commencing the date of the first

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payment. If payments are not made, interest may continue to be charged and may be added to the property and collected as taxes.

**When D.C. Amount is Determined** – The Bill proposes that the D.C. amount for all developments proceeding by site plan or requiring a zoning amendment shall be determined based on the D.C. charge in effect on the day of the application for site plan or zoning amendment. If the development is not proceeding via these planning approvals, then the amount is determined at the earlier of the date of issuance of a building permit or occupancy.

**Soft Services to be Included in a New Community Benefit Charge Under the Planning Act** – It is proposed that a municipality may, by by-law, impose community benefits 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 by-law applies. These services may not include services authorized by the D.C.A. Various provisions are provided as follows:

- Before passing a community benefits charge by-law, the municipality shall prepare a community benefits charge strategy that (a) identifies the facilities, services and matters that will be funded with community benefits charges; and (b) complies with any prescribed requirements.
- The amount of a community benefits charge payable shall not exceed an amount equal to the prescribed percentage of the value of the land as of the valuation date.
- The valuation date is the day before building permit issuance.
- Valuations will be based on appraised value of land. Various requirements are set out in this regard.
- All money received by the municipality under a community benefits charge by-law shall be paid into a special account.
- In each calendar year, a municipality shall spend or allocate at least 60 percent of the monies that are in the special account at the beginning of the year.
- Requirements for annual reporting shall be prescribed.
- Transitional provisions are set out regarding the D.C. reserve funds and D.C. credits.

## Remarks

The proposed legislative changes noted above will require a more detailed review to consider the impact to the D.C. and *Planning Act* matters including methodology, collection policies and transition policies. As we have done in the past, our firm will be engaging with legal advisors to further consider the full implications of the Bill and potential Regulations. We will be providing a submission on the Bill to the Province on behalf of our D.C. clients. A few direct comments are made at this time for consideration of the reader, as follows:





#### Payment in Installments Over Six Years

- The delay in receiving the D.C. revenue will impact the D.C. cashflow. As most of these “hard services” must be provided in advance of development occurring, it will require increased debt borrowing. Added debt interest will have upward pressure on the D.C. quantum.
- 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.
- The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing and commercial/industrial/institutional development building permit will cause a tremendous administrative burden on municipalities. This will add to staffing requirements and be reflected in higher planning and building permit fees.

#### When D.C. Amount is Determined

- Locking in the D.C. rates well in advance of the building permit issuance would produce a shortfall in D.C. revenue, as the chargeable rates will not reflect the current rate as of the time the development proceeds to be built.
- There should be a time limit on how long the development takes to move from site plan approval, or zoning change, to the issuance of a building permit. There is no financial incentive for the development to move quickly to building permit. This may induce speculation to change the land use and then market the lands. (Note: There is an opportunity for a time limit to be prescribed by regulation; however, there are a number of references currently in the D.C.A. that “the Minister may prescribe” which have not been acted upon.)

#### Soft Services to be Included in a New Community Benefit Charge Under the *Planning Act*

- More information is needed, as there are several key items to be included as part of the regulations. That is, what items are to be included in the community benefits charge strategy and what percentage of the “value of land” is to be eligible for collection?
- Depending on what is to be included in the community benefits charge strategy, this may be undertaken at a similar time as the D.C. background study. As noted, however, it is unclear as to the prescribed items to be included along with the process required to adopt the strategy and the by-law.
- Concern is raised regarding what prescribed percentage of the land value will be allocated for the charge. If the same percentage is provided for all Ontario, then a single-family lot in Toronto valued at \$2 million will yield 20 times the revenue of a \$100,000 lot in eastern Ontario. Given that building costs for the same



facilities may only vary by, say, 15%, the community benefits charge could yield nominal funds to pay for required services for municipalities outside the G.T.A.

- It is unclear how the community benefits charge will be implemented in a two-tier municipal system. Given that both the upper and lower tiers will have needs, there is no guidance on how the percentage of the land value will be allocated, or how the process for allocating this would occur. Obviously, land values will vary significantly in urban vs. semi-urban communities (e.g. in York Region, land value in Markham is significantly higher than in Georgina), so the upper-tier needs may only take, say, 30% of the allotted value in the urban areas but 75%-90% of the allotted semi-urban or rural values.
- Given the need for appraisals and the ability of the applicant to challenge the appraisal, 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.

We trust that the above information is helpful. For those clients who are in the midst of a background study process, we would be pleased to further discuss this with you and Council shortly. For our other clients, we would be pleased to arrange a time to discuss this further. As noted above, we will be providing further feedback to the Province during this legislative process.

Yours very truly,

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