

REPORT

REPORT TO: Mayor Bonnette and Members of Council

REPORT FROM: Brent Marshall, Chief Administrative Officer

DATE: May 14, 2019

REPORT NO.: ADMIN-2019-0021

RE: Bill 108 More Homes, More Choice Act - Comments

RECOMMENDATION:

THAT report No. ADMIN-2019-0021 dated May 14, 2019 regarding Bill 108 be received for information;

AND FURTHER THAT staff be directed to prepare submissions to the Province of Ontario on Environmental Registry of Ontario (ERO) as outlined in Report ADMIN-2019-0021;

AND FURTHER THAT the Town Clerk forward a copy of Report ADMIN-2019-0021 to the Minister of Municipal Affairs and Housing and Minister of the Environment, Conservation and Parks, Halton Area MPPs, Region of Halton, the City of Burlington, the Town of Milton and the Town of Oakville for their information.

BACKGROUND:

In November 2018 the Ministry of Municipal Affairs and Housing began consultation to help inform and develop the “Provincial Housing Strategy Action Plan”. This focused on five broad themes: speed of developments to secure approval, mix of housing, development costs, rent and innovation.

In early February, through [PLS-2019-0010](#), Council endorsed comments submitted by the Halton Area Planning Partnership on the Province’s Housing Supply Action Plan.

Provincial consultations on the Growth Plan and the Housing Supply Action Plan have resulted in Bill 108 – More Homes, More Choice Act, introduced on May 2, 2019.

Bill 108 proposes to amend a number of Provincial statutes through different Schedules of the Bill, including:

Schedule 1 Cannabis Control Act, 2017
Schedule 2 Conservation Authorities Act
Schedule 3 Development Charges Act, 1997
Schedule 4 Education Act
Schedule 5 Endangered Species Act, 2007
Schedule 6 Environmental Assessment Act
Schedule 7 Environmental Protection Act
Schedule 8 Labour Relations Act, 1995
Schedule 9 Local Planning Appeal Tribunal Act, 2017
Schedule 10 Occupational Health and Safety Act
Schedule 11 Ontario Heritage Act
Schedule 12 Planning Act
Schedule 13 Workplace Safety and Insurance Act, 1997

There are specific changes associated with Bill 108 and/or the implementation of the Housing Supply Action Plan that have been posted by the Province of Ontario to the Environmental Registry (ERO). Below are a list of postings, their ERO reference number and timing for consultation:

1. Planning Act, Schedule 12 of Bill 108 (ERO 019-0016); consultation open until June 1, 2019 – **Staff to make an official submission prior to deadline**
2. Development Charges Act, Schedule 3 of Bill 108 (ERO 019-0017); consultation open until June 1, 2019 – **Staff to make an official submission prior to deadline**
3. Ontario Heritage Act, Schedule 11 of Bill 108 (ERO 019-0021); consultation open until June 1, 2019 – **Staff to make an official submission prior to deadline**
4. Environmental Assessment Act, Schedule 6 of Bill 108 (ERO 013-5102); consultation open until May 25, 2019
5. Excess Soil Management Regulatory Proposal through changes to the Environmental Protection Act (ERO 013-2774); consultation closed June 2018
6. Excess Soil Regulatory Proposal and Amendments to Record of Site Condition (Brownfields) Regulation through changes to the Environmental Protection Act (ERO 013-5000); consultation period closes May 31, 2019 - **Staff are reviewing the current proposal and may make an official submission prior to deadline**
7. Endangered Species Act (ERO 013-5033); consultation closed May 18, 2019 (PLS-2019-0036)
8. Conservation Authorities Act (ERO 013-5018 and ERO 013-4992); consultation closed May 21, 2019 (PLS-2019-0036)
9. Growth Plan transition regulation through O. Reg. 311/06 (ERO 019-0018); consultation open until June 1, 2019 – **Staff to make an official submission prior to deadline**

Unless listed above, the balance of the proposed changes related to Bill 108 have not been posted for consultation. This report addresses implications related to the proposed changes in the above named statutes.

COMMENTS:

One of the most significant challenges in providing appropriate comments on proposed Bill 108 is the absence of the key implementation elements (the regulations), which are not yet available. Timing on release of these regulations remains unknown, meaning staff will continue to review the potential impacts of the Bill and report back to Council once the regulations are made available.

Schedule 1: Cannabis Control Act

Makes amendments related to the section which authorizes the interim closure by a police officer of premises connected with specified alleged contraventions of the Act. These changes have no direct impact on the Town.

Schedule 3: Development Charges Act

Schedule 3 of Bill 108 amends the *Development Charges Act* in terms of prescribed services, payment for certain classes of development, and timing around the determination of charges; there are also amendments under Schedule 12 of Bill 108 regarding the Planning Act, which impact services currently funded through discounted development charges.

The proposed amendments are highlighted below, along with some potential impacts. It is important to note again that Bill 108 does not have the details normally set out in regulations, which has generated a number of questions around administration and exactly how these changes would affect the Town.

Prescribed Services

The first proposed amendment specifies the services for which a DC (Development Charge) by-law may impose development charges. These include:

- Waste water services, including sewers and treatment services
- Storm water drainage and control services
- Services related to a highway
- Electrical power services
- Policing
- Fire protection services
- Toronto-York subway extension (TYS)
- Transit services other than TYS
- Other services as prescribed
- Waste diversion

There is a further amendment under Schedule 3 that exempts second dwelling units in new residential buildings from development charges, including structures ancillary to dwellings such as coach and laneway houses.

Potential Impacts:

- As per this amendment, Development Charges (DCs) can only be charged for the growth-related costs in the prescribed list, which primarily represent “hard services”. Waste diversion is the only new service added, which will be of benefit to the Region; this will not include the costs associated with landfill sites/services or incineration. These services would be eligible for 100% recovery.
- Exemptions for secondary suites may serve as an incentive for more affordable housing. It is expected that regulations will better define the classes of residential dwellings and structures ancillary to residential dwellings that are DC-exempt.
- The development charges for “soft services” (libraries, parkland development, recreation), currently discounted at 10%, have been eliminated. Public library material has also been excluded from development charge calculations. “Soft services” are addressed under the Community Benefit Charge section later in this report.

Instalment Payments for Development Charges

The second proposed amendment establishes rules for the payment of development charges.

- The amendment covers five types of development: rental housing, non-profit housing, institutional, industrial and commercial.
- Unless exceptions apply, these developments can pay development charges in six annual instalments, commencing with the occupancy permit or occupancy (whichever is earlier).

Potential Impacts:

- With most hard services provided in advance of development, municipalities will be challenged by a limited cash flow and may be forced to interim finance servicing through debt or reserves (if reserves have the capacity). Added debt and the associated interest will increase the cost of servicing and in turn, drive up DC rates and/or taxes. Alternatively, municipalities may decide to defer servicing until they are in a position to absorb the costs; this will have the effect of inhibiting growth.
- Similarly, this amendment will affect the Region’s servicing program with respect to water and wastewater infrastructure. There is the possibility that the Region’s tax component and/or DC rates may increase, or servicing may slow down. An increase in the Region’s taxes will negatively affect the blended tax rate.
- Managing multi-year instalments for each of these types of developments will demand greater administrative time and may require an investment in tracking technology.
- Any defaults on any of the annual payments after issuance of the building permit would be placed on property taxes and passed on to the home owner.
- With the potential for changes in ownership or changes in use, i.e., a rental property that qualifies for the instalment payment option converts to a condominium that originally would not qualify for six annual instalments, there is the possibility that

owners of condominiums may be unexpectedly liable for unpaid DC charges. Being able to register the agreement against the land ensures that subsequent owners are aware of the liability.

Determining Development Charges

The third amendment sets out rules for when the development charge is determined.

- The amount is determined based on the development charge rate in effect when the site plan application or zoning amendment application is received.
- If neither such applications are needed, the charge is determined upon issuance of the building permit; if a specified period has elapsed since approval of the relevant application, the amount continues to be determined at the point the building permit is issued.

Potential Impacts:

- There could be a shortfall in development charges because of the difference in timing between the site plan or zoning amendment application and actual construction i.e., servicing costs have increased. The tax base may be required to pay the difference.

Community Benefits Charge By-law

Bill 108 proposes to consolidate section 37 contributions (a provision whereby a municipality may authorize increases in height and density in return for facilities, services or matters agreed upon with the developer) as well as section 42/51.1 regarding parkland dedication requirements into a single fee, called a community benefits charge (“CBC”). The CBC is proposed to pay for “the capital cost of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies.” This includes “soft services.”

- The “soft services” no longer funded through the Development Charges Act, would be addressed through a re-enacted Section 37, which in effect enables municipalities to collect fees through a community benefits charge (CBC).
- Municipalities would have the authority to impose a CBC by-law to cover facility capital costs, services and “matters required because of development or re-development in the area to which the by-law applies”.
- The amount of the CBC cannot exceed the prescribed percentage of the land value as of the date of the valuation (which is to be the date before building permit issuance); a dispute resolution process is available for landowners who believe that the charge exceeds the maximum allowable.
- The monies received under a CBC by-law must be paid into a special account, and a municipality must spend or allocate 60% of the monies in that special account each year.
- The Bill includes transitional provisions related to the repeal of the current Section 37.

Potential Impacts:

- Further to the CBC by-law, there is the expectation that municipalities will also prepare a CBC strategy that identifies the facilities, services and matters to be funded. No definition of “services” and “matters” has been provided, other than services must exclude those listed in the *Development Charges Act*.
- The amount the Town receives to support soft services will be capped at a particular point in time based on a percentage of the appraised land value. This percentage has not been specified. However, the monies received for “soft services” through the CBC will not be based on costs driven by growth (as has been the case). This change to CBC funding appears to depart from the founding principle of DCs, which is that growth should pay for growth. Further, without the specified percentage, it is difficult to assess whether the CBC will be a reasonable funding substitute for the discounted DCs.
- It is not clear who is responsible for the cost of land valuation; it appears that if the municipality contests the value of the land, it is up to the municipality to pay for a second appraisal.
- There is no specified allowance for geographical differences in land value; the Bill indicates that the regulations may prescribe different percentages for different municipalities and for different values of land.
- If construction is postponed by a developer, there is no indication as to whether a land valuation can be annually indexed in accordance with construction prices.
- The requirement to spend or allocate 60% of the money in the special CBC account is also concerning. Further detail is needed around what would be an acceptable ‘allocation’.
- In terms of administration, would the CBC strategy take into account reserves that may be a negative balance position—reserves that would have otherwise been balanced by the future intake of development charges? In addition, how would the CBC factor in post-period benefits that would also be collectible through future development charges? These and other details regarding the transition from discounted development charges to the CBC are not provided.
- It appears that the Town’s current Development Charges By-law, which was to remain in effect until 2022, will be deemed to have expired if the changes in the Bill are enacted prior to that date. As such, the Town may be looking at costs to produce a new DC Background Study/By-law in addition to a CBC Strategy and associated By-law.
- In general, the CBC will be cumbersome, time-consuming and costly to administer as each planning application will need to be monitored to building permit issuance, and a land valuation process will need to be in place.

Potential Impacts (Parkland):

- If the proposed Bill 108 amendments are implemented, development charges will no longer contribute to community infrastructure. The Town funds a range of new park development, parkland improvements, and community recreation centres using development charges. Staff notes that there is in the order of \$46 million identified

in the 2017 Development Charges Study that have been identified for Recreation and Parks projects.

- Any changes to capital funding that result from Bill 108 that are not revenue neutral, including changes to the *Development Charges Act*, will have negative implications for the delivery of parkland and related facilities.
- Staff recently outlined to Committee the challenges with securing adequate parkland through Report RP-2019-0013 - Parkland Acquisition Strategy. With the proposed changes to the Planning, and Development Charges Acts, securing and constructing parkland will become even more difficult. The loss of parkland would not align with Council's strategic objectives for complete communities and the social, environmental, economic, and health benefits associated with parks.

Schedule 4: Education Development Charges

A section is added which enables a Board, upon request and approval by the Minister, to allocate revenue from education development charges to projects that would address the need for pupil accommodation and reduce the cost of acquiring land.

A second section is added that gives a Board the flexibility to enter into agreements with landowners, giving landowners the options of leasing land, providing land, or another prescribed benefit to provide for pupil accommodation in exchange for the Board not imposing education development charges against the land.

Potential Impacts:

- These amendments may help offset the costs of building more schools in areas where the student population is expanding beyond the capacity of existing facilities. This in turn may mitigate increases in the education tax component.

Schedule 2: Conservation Authorities Act (CAA)

Report PLS-2019-0036 addresses the earlier changes proposed to both the *Conservation Authorities Act* and the *Endangered Species Act*, and summarizes for Council the Halton Area Planning Partnership (HAPP) joint submission regarding these proposed pieces of legislation.

Bill 108 also proposes changes to the *Conservation Authorities Act* as follows:

- Revised the core mandate for Conservation Authorities (CAs) to natural heritage protection and management; conservation and management of conservation authority lands; and the protection of drinking water sources under the *Clean Water Act, 2006*.
- CAs will be required to enter into Memoranda of Understanding with municipalities regarding service delivery, primarily as it relates to planning and development to avoid duplication and streamline processes.
 - The regulations (once released) will prescribe dates upon which these MOUs must be completed. Bill 108 requires transition plans to be created

by the CAs for the purpose of ensuring the required MOUs will be in place by the prescribed date.

Schedule 5: *Endangered Species Act (ESA)*

Changes to the *Endangered Species Act* as proposed by Bill 108 include:

- Requirements that the criteria for consideration of species at risk be considered in the broader context when determining a species status – both inside and outside of Ontario.
- A new fund called a Species at Risk Conservation Fund would be created. This fund would permit developers and municipalities to obtain a permit and submit a fee in lieu of meeting conditions of approval where proposed municipal works or development damages a habitat.
- The Committee on the Status of Species at Risk in Ontario (COSSARO) will be required to submit annual reports between January 1 and 31st of each year identifying the classification of each new species that has been classified since the previous annual report, along with the rationale for the classification.
- If COSSARO has indicated that a species is at risk, but the Species at Risk in Ontario List has not been updated to reflect the classification, the Minister may require COSSARO to reconsider their classification and submit a second report either confirming the first classification or reclassifying the species all together.

Schedule 6: *Environmental Assessment Act*

The province is proposing to modernize the Environmental Assessment Act to exempt low risk activities within the municipal class EA.

- These could include speed bumps, de-icing, and streetscaping.
- The province has also exempted itself from a number of EA requirements related to transit, mines, parks and real estate.
- In addition to the changes to the Act, the Province has also released a discussion paper that is being reviewed. Municipalities, through various groups such as the Municipal Engineers Association have been requesting modifications to the Environmental Assessment Act for exemptions on low risk activities.
- The changes presented are generally seen as positive, subject to reviewing the regulations along with the final Environmental Assessment Program.
- Once the regulations are provided, it is expected that the Municipal Engineers Association Class Environmental Assessment documents would be updated.

Schedule 9: *Local Planning Appeal Tribunal Act*

Inherently intertwined with one another, the changes to the *LPAT Act* work hand in hand with the changes proposed to the *Planning Act*.

In a May 2, 2019 letter released by Minister Clark's office, the amendments to the *Planning Act* were identified as being proposed to address concerns regarding the land use planning appeal system. Linked to these proposed changes includes the

broadening of the Local Planning Appeal Tribunal (LPAT)'s jurisdiction over major planning matters, and give the Tribunal the authority to make a final decision on appeals of these matters (i.e. Official Plan and Zoning By-law Amendments).

In general, Bill 108 maintains the name of the Local Planning Appeal Tribunal, however returns to many of the powers of the preceding Ontario Municipal Board.

Some of the key changes in the LPAT Act include:

- LPAT will have the ability to require mandatory participation in mediation or dispute resolution processes, under specific circumstances.
- The Tribunal will have the authority to limit the examination or cross-examination of a witness where they are satisfied that all matters related to the issues before the Tribunal have been appropriately disclosed.
- Non-parties to an appeal will be limited to providing written submissions to the Tribunal, however, they may be examined or required to produce evidence.
- Case management conferences will be mandatory for appeals regarding specific sections of the *Planning Act*.

Schedule 12: Planning Act

The changes proposed to the *Planning Act* through Bill 108 have been prepared with the intent that they will facilitate an increase in the mix and availability of housing supply throughout the Province. Amendments to the *Planning Act* were identified as helping to make the planning system more efficient and effective, increase housing supply in Ontario, and streamline planning approvals

Key changes to the Planning Act are as follows:

- Timeframes for municipal decisions related to Official Plans and Official Plan Amendments; Draft Plan of Subdivisions and Zoning By-law Amendments have been reduced significantly, as is demonstrated by the following chart:

Application	2006-2018 (Pre-Bill 139)	2018-present (Bill 139)	Proposed (Bill 108)
Official Plan/Official Plan Amendment	180 days	210 days (~7 months)	120 days (~ 4 months)
Zoning By-law Amendment	120 days	150 days (~5 months)	90 days (~3 months)
Draft Plan of Subdivision	180 days	180 days (~ 6 months)	120 days (~ 4 months)

- That only the applicant, municipality, Minister or public body that requested the amendment would have the right to appeal a non-decision regarding an Official Plan Amendment.
- Similarly, as it relates to Draft Plan of Subdivision, only the applicant, municipality, Minister, public body or persons on a prescribed list would have the right to appeal an approval authority's decision.
- Bill 108 also proposes to remove the two-step appeal process and return to a single-hearing, providing LPAT the ability to make final decisions to approve, refuse, or modify the application (instrument) under appeal.
- The concept of *de novo* hearings has also been reinstated through Bill 108, which means that on appeals, new evidence that was not previously before Council when they made a decision may be introduced before LPAT. However, the proposed legislation would require that the municipality be given an opportunity to consider that evidence and make a recommendation to the Tribunal.
- In addition, LPAT will no longer evaluate appeals solely based on conformity with an upper-tier Official Plan or consistency with Provincial policy; rather the test of what constitutes "good planning" has been reinstated.
- Official Plans will now be required to contain policies that would permit two residential units (secondary units) within a single, semi-detached or townhome, as well as an additional unit in an ancillary building (i.e. a detached garage). Previous regulations required that a secondary unit could be located either within the principal dwelling or the ancillary dwelling, but not both.
- Inclusionary zoning would now be limited to areas around protected Major Transit Station Areas (MTSAs) or areas where an approved Development Permit System (DPS) is in place. Directly linked to this is a new power for the Minister to require a specific area to be subject to inclusionary zoning.
- Section 37 of the current *Planning Act* regarding bonussing provisions has been repealed and replaced by a new Section 37 which identifies Community Benefits Charges (CBCs). These new CBCs are discussed in more detail in the section of this report related to changes to the *Development Charges Act*.
- Proposed changes to the legislation would repeal the provisions which enable municipalities to have an alternative parkland dedication requirement for residential uses (1 hectare per 300 dwelling units) under Section 42 (parkland) and Section 51 (plan of subdivision) of the Planning Act. The existing legislation allows municipalities to collect parkland to support different building forms and levels of intensification.
- The proposed legislation only maintains the ability to secure the base rates of 2 per cent for commercial and industrial and 5 per cent for all other uses for park purposes if there is no Community Benefits Charge By-law in-force. Until the details in the provincial regulations associated with the Bill become available, the full impact of the changes to the parkland dedication rates is unclear.
- Parkland by-laws may be passed by a municipality, which are applicable to the entire municipality or a defined area within it, as a condition of development.
- A new section has been added to the *Planning Act* to require that a parkland by-law has no force and effect if a CBC by-law under Section 37 is in force.

Potential Impacts of LPAT Act and Planning Act changes:

- In general, the changes proposed to the *LPAT Act* regarding required mediation, limited examination or cross-examination of witnesses, requirements for non-parties to an appeal and requiring case management conferences appear to be positive changes proposed via Bill 108. However, broadening LPATs jurisdiction over major planning matters such as Official Plan and Zoning By-law Amendments presents a concern.
- With the proposed reduced approval timeframes for municipal decisions on planning applications, the required deadlines for making decisions would need to be predicated on the quality of the submissions received by municipalities. The time spent working on revisions to submissions is often based on the quality of the submission when the application is deemed complete. Provincial guidance regarding the merit of submissions would be required.
- The reduced approval timeframes become problematic from a Council and Committee Calendar perspective. For example, if an application for Zoning By-law Amendment is submitted and deemed complete on June 1, the Town would be required to hold the statutory public meeting during July, with the intent of having the amendment finalized and comments from agencies received before August, in order to meet reporting deadlines and legislative requirements regarding availability of the draft amendment in advance of the September 1 approval deadline. In this case, if the Province is seeking reform from the 150 days currently permitted by Bill 139, staff recommends a return to the 120 days timeframe as per Pre-Bill 139 requirements.
- The re-introduction of de novo hearings raises the possibility of longer, more costly hearings as well as the potential for information not available to Council at the time of the initial decision to be considered by LPAT. When new evidence is introduced to LPAT that was not sent back to Council for consideration, it undermines the local Official Plan and Council's decision making power.
- The inability to use the current *Planning Act* Section 37 (height and density bonussing provisions) in exchange for public benefits causes concern.
- Based on a preliminary review of the parkland calculation for the Vision Georgetown Secondary Plan, staff estimates that the loss of parkland collected to be in the area of five hectares, and note that even with the current legislation, community parkland needs are not secured through development approval process. Bill 108 will decrease the municipality's ability to collect the desired rate of parkland in line with the provisions of the Official Plan.

Schedule 11: Ontario Heritage Act

The changes proposed to the *Ontario Heritage Act* are intended to increase transparency in the registration of heritage properties, clarify what is meant by 'alteration' and 'demolition', and proposes new timeframes and requirements for notices which are currently open-ended.

- It should be noted that under the proposed legislation, municipalities will be required to notify owners if their property is not formally designated but has been included on a heritage registry. The Town has already been providing this type of notice during the development of our Comprehensive Heritage Registry.
- It is proposed that the municipal heritage register now include the legal description of the property; the name and address of the owner; a statement explaining the cultural heritage value of the property and a description of the heritage attributes of the property.
- Owners will have the ability to object to a municipality's decision to list a property and further, would be able to appeal to LPAT should they believe their lands are not appropriately designated as a heritage property on the municipal list.
- Timeframes regarding providing notice are also proposed. Municipalities will be required to provide notice to owners within 30 days of a decision to list a property on a heritage register.
 - Regulations which are not yet available for review will also prescribe what the notice must include

Potential Impacts:

- In general, the changes proposed to the *Ontario Heritage Act* do not appear to cause significant concern as many of the changes proposed regarding providing notice to owners has already been the practice of the Town.

RELATIONSHIP TO STRATEGIC PLAN:

This report supports Council's strategic plan.

FINANCIAL IMPACT:

This report has no direct financial impacts. Financial impacts associated with implementation of legislation upon royal assent will be communicated in future updates.

CONSULTATION:

Commissioners were consulted and provided input applicable to their areas of expertise and associated impact.

PUBLIC ENGAGEMENT:

No public engagement is required at this time.

SUSTAINABILITY IMPLICATIONS:

The recommendation outlined in this report is not applicable to the Sustainability Strategy's implementation.

COMMUNICATIONS:

Distribution of report as noted in the recommendations.

CONCLUSION:

Bill 108 is an omnibus bill, containing numerous amendment to many pieces of legislation. Changes related to Bill 108 will have implications for the Town. The full extent will not be understood until associated regulations are drafted. Staff will continue to keep Council informed as more information is learned.

Reviewed and Approved by,

A handwritten signature in black ink that reads "Brent Marshall". The signature is written in a cursive, flowing style with a prominent loop at the end of the last name.

Brent Marshall, Chief Administrative Officer