TORONTO

REPORT FOR ACTION

Proposed Bill 108 (More Homes, More Choice Act, 2019) and the Housing Supply Action Plan - Preliminary City Comments

Date: May 14, 2019
To: City Council
From: City Manager and Chief Planner and Executive Director, City Planning
Wards: All

SUMMARY

On May 2, 2019, the Minister of Municipal Affairs and Housing announced the Province's Housing Supply Action Plan and introduced Bill 108 (More Homes, More Choices Act) in the Legislature. The Bill proposes to amend 13 statutes. The Provincial commenting period on the proposed changes closes on June 1, 2019. The following report has been prepared by the City Planning Division in consultation with the Corporate Finance Division, Legal Services, Parks, Forestry and Recreation and other divisional partners impacted by the proposed Bill 108 amendments discussed in this report.

This report highlights the proposed changes to the *Planning Act*, *Local Planning Appeal Tribunal Act, 2017*, *Ontario Heritage Act* and the *Development Charges Act,1997* and provides preliminary comments on their impact on municipal land use planning, the development approval process, heritage conservation and on funding for community facilities and infrastructure.

The report also summarizes the Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, which replaces the 2017 Growth Plan and which comes into effect on May 16, 2019. The associated 2019 Growth Plan transitional matters regulation (Ontario Regulation 311/06) is open for comment until May 31, 2019.This report also comments on this proposed regulation.

Despite the absence of implementation details, the proposed changes to legislation in Bill 108 signal that there will be significant impacts on: the City's finances; the ability to secure parkland; the capacity to provide community facilities; and on the evaluation of development applications that would afford appropriate opportunities for public consultation and conservation of heritage resources.

Bill 108 contains limited evidence that its central objectives, making it easier to bring housing to market and accelerating local planning decisions, will be achieved. Currently

over 30,000 residential units in 100 projects proposed within Toronto are awaiting Local Planning Appeal Tribunal (LPAT) outcomes. Significantly shortening statutory review timelines; reducing opportunities for collaborative decision-making at the front-end of the municipal review process; expanding the scope of reasons to appeal development applications to the LPAT; and introducing a completely new process for determining community benefit (facilities) contributions could result in increased appeals and an even greater proportion of the housing pipeline projects being held up as part of the LPAT process.

In addition, Bill 108 undermines the City's ability to ensure that "growth pays for growth" through substantive amendments to Sections 37 and 42 of the *Planning Act*, and the *Development Charges Act*. Combined, these tools account for a large proportion of the City's 10-year capital plan which supports critical infrastructure investments, including:

- 12 child-care centres with a cumulative 583 spaces;
- 21 Toronto Public Library expansion and renovation projects;
- 106 new or expanded parks; and
- 17 community recreation centres, 5 pools, 4 arenas and over 200 playground improvement projects.

With 140,441 approved but unbuilt residential units and an additional 167,309 units currently under review (representing an estimated 540,000 people who could be housed), the need to plan for Toronto's long-term liveability and manage the impacts of growth, is of paramount importance

By diverging from the long-held approach of growth paying for growth, future developments could result in a negative financial impact on the City. If this were to occur, the net outcome would be that existing residents and businesses, who make up the City's tax base, would in effect be partially subsidizing new development. Alternatively, the current service level standards would need to be adjusted to reflect this new fiscal environment. In spite of these changes, it is unlikely that they will positively impact housing affordability as Bill 108 does not provide for any mechanisms to ensure that reduced development costs are passed through to future home buyers and renters.

The full impact of many of the proposed Bill 108 amendments will be assessed when implementation details, to be outlined in provincial regulations associated with the Bill, become available. The Province has not issued any information as to the timing or content of these regulations. City staff will continue to assess the impacts of the proposed legislation and provide additional comments to Council when the regulations have been released.

RECOMMENDATIONS

The City Manager and Chief Planner and Executive Director, City Planning recommends that City Council:

1. Request the Province to extend the June 1, 2019 timeline on the Environmental Registry of Ontario for comments on proposed Bill 108 to provide additional time for municipalities to comment on the proposed legislation.

2. Request the Province to consult with the City prior to issuing any draft regulations associated with proposed Bill 108, before the coming into force of the proposed Bill, such that the City can fully understand and be able to analyze the impact of the proposed Bill changes comprehensively, including the cumulative financial impacts to municipalities.

3. Request the Province to enshrine revenue neutrality in the proposed legislation and if not, create a municipal compensation fund to support municipalities whose revenues decline under the proposed community benefit charge regime.

4. Request the Province to provide a transparent and thorough stakeholder consultation process in the development of all regulations associated with proposed Bill 108.

5. Direct the Chief Financial Officer and Treasurer to report back through the 2020 budget process on any necessary curtailment of growth-related or other capital expenditures resulting from the enactment of proposed Bill 108.

6. Authorize the City Manager, the Chief Financial Officer and Treasurer and other City Officials, as appropriate, to provide input to the Province on Bill 108 on policy and financial matters and any associated regulations.

7. Forward this report to the Ontario Minister of Municipal Affairs and Housing and the Attorney General for their consideration.

Planning Act Recommendations

8. Request the Province to reconsider the timelines established for review of *Planning Act* applications before an appeal is permitted to the Tribunal and to return to the timelines that were in effect under Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017.*

9. Request the Province to permit municipalities to utilize the inclusionary zoning provisions of the *Planning Act* in broader situations than the proposed protected major transit station and development permit system areas.

10. Request the Province to retain the existing *Planning Act* grounds for appeals of zoning by-laws and official plan amendments to only include testing for consistency with provincial policy statements, conformity with provincial plans and (for zoning by-laws) conformity with the Official Plan and to incorporate other legislative measures that would provide for more deference to the decision-making powers of municipal councils.

11. Request the Province to revise the name of the proposed ″community benefits charge by-law″ to the “community facilities charge by-law” to better recognize that

community facilities are necessary infrastructure needed to support development pursuant to the Growth Plan.

12. Request the Province to provide the later of four years or the expiry of the current development charges by-law from the date of enactment of the regulation that sets out any prescribed requirements for the community benefit charges before a municipality must adopt a community benefits charge by-law.

13. Request the Province to add the following provisions to Section 37 of the *Planning Act* as 37(6.1) and (6.2) in Schedule 12:

a) "6.1 Where an owner of land elects to provide an in-kind facility, service or matter because of development or redevelopment in the area to which a community benefits charges by-law applies, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facility, service or matter."

b) "6.2 Any agreement entered into under subsection (6.1) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the *Registry Act* and the *Lands Titles Act*, any and all subsequent owners of the land."

14. Request the Province to delete subsections 37(15), (16), (17) (18) and (19) and add new subsection 37(15) to the *Planning Act* that reads:

"If the municipality disputes the value of the land identified in the appraisal referred to in clause 13(b), the municipality shall request that a person selected by the owner from the list referred to in subsection 37(18)
prepare an appraisal of the value of the land as of the valuation date."

15. Request the Province to amend subsection 37(20) to also require the owner to immediately provide any additional payment to the municipality where the appraisal established in 37(15) is more than the initial appraisal provided by the municipality.

16. Request the Province address effective transition by amending subsection 37.1 (3) so that it reads:

"On or after the applicable date described in subsection (5), the following rules apply if, before that date, an application (complete or incomplete) under Section 34 of the *Planning Act* has been received by the local municipality for the site or the Local Planning Appeal Tribunal has made a decision to approve a by-law described in the repealed subsection 37(1). Where an application is withdrawn by the owner and a new application is submitted within three years of the effective date, the *Planning Act,* as it read the day before the effective date*,* will apply."

17. Request the Province to permit annual indexing of the rates based on a blend of property value and construction cost inflation and calculated using public, third-party data if property values continue to be proposed to be used for the purposes of establishing the rate.

18. Request the Province to clarify Section 37 provisions in Bill 108 to:

a) enable a municipality to have a city-wide community benefit charge by-law or area-specific by-laws provided only one community benefit by-law applies in any given area;

b) recognize that maximum specified caps may differ in any given area within a municipality based on an analysis of local area needs and the anticipated amount, type and location of development as set out in the respective community benefit strategy;

c) ensure that maximum specified rates as set out in any regulation will be established in consultation with municipalities with regular updates (e.g. no less than every five years) to the maximum specified rate contained within any regulation.

19. Request the Province to include a transition provision that specifies that the repeal of any provisions in the *Planning Act* which set out an alternative parkland dedication requirement will only occur once a municipality has enacted a community benefit charge by-law(s).

20. Request the Province to amend Section 42 of the *Planning Act* to provide additional predictability and transparency between Sections 37 and 42, and to support the achievement of complete communities in accordance with Amendment 1 of the Growth Plan, 2017 as follows:

a) enable municipalities to secure the conveyance of land for park purposes as a condition of the development or redevelopment of land along with the ability to secure a community benefits (facilities) charge in accordance with Section 37 of the *Planning Act*;

b) clarify that where a municipality secures the conveyance of land for park purposes as a condition of development or redevelopment, the community benefits (facilities) charge will not include a payment in lieu of parkland for the site;

c) revise for residential development the maximum conveyance of land for park purposes to be based on a maximum per cent of the development site as determined through a community benefits (facilities) charge strategy and as established by by-law as opposed to 5 per cent of the land currently proposed in Bill 108; and

d) allow municipalities to set different maximum rates for the conveyance of land for park purposes for residential development based on building type(s) and intensity of development to ensure equitable contributions between different types of residential development and to support parkland need generated by the development.

21. Request the Province to amend proposed Bill 108 to allow municipalities to require both the community benefits (facilities) charge and/or the provision of in-kind facilities and the conveyance of land for park purposes in plans of subdivision to achieve complete communities with additional amendments to section 51.1 as per the requested amendments to Section 42 of the *Planning Act* reflected in Recommendation 20.

Development Charges Act Recommendations

22. Request the Province to delete provisions to delay development charges payment obligations and so preserve the concurrent calculation and payment of development charges.

23. Request the Province to not repeal the parkland and community infrastructure component of the *Development Charges Act, 1997* in advance of the completion of the Community Benefit Charge Strategy and Community Benefit Charge By-law.

24. Request the Province to amend Subsection 2(4) of the *Development Charges Act, 1997* to add "parks & recreation, and paramedic services" as growth related capital infrastructure.

25. Request the Province to amend Subsection 32(1) of the *Development Charges Act, 1997* so that it reads:

> "If a development charge or any part of it remains unpaid after it is payable, the amount unpaid including any interest payable in respect of it in accordance with this Act shall be added to the tax roll and shall be collected in the same manner as taxes and given priority lien status."

26. Request the Province to amend Subsection 26.1(2) of the *Development Charges Act, 1997* dealing with when a charge is payable, to provide definitions for the types of developments listed.

27. Request the Province to delete Subsection 26.1(2) 4. of the *Development Charges Act, 1997*.

28. Request the Province to ensure that the prescribed amount of time referred to in Subsection 26.2(5), (a) and (b) of the *Development Charges Act, 1997* be set at no longer than two years.

29. Request the Province to amend the *Development Charges Act, 1997* by adding the following provisions to permit the entering into and registration of agreements entered into pursuant to Section 27(1) of the Act:

> "27(4) Any agreement entered into under subsection (1) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the *Registry Act* and the *Lands Titles Act*, any and all subsequent owners of the land."

Ontario Heritage Act Recommendations

30. Request the Province that if the objection process is to be maintained as currently proposed in Bill 108, a time limit be included within which a person may object, by adding to the end of Subsection 27(7) of the *Ontario Heritage Act*, "within 30 days of the notice referred to in Subsection (5)."

31. Request the Province to amend Section 27 of the *Ontario Heritage Act*, to provide for a more efficient process for listings to allow an owner to object to a listing at a statutory public meeting before Council makes any decision, and in turn to make proposed Subsection 27(9) (Restriction on demolition, etc.) applicable from the date that notice is given respecting the proposed listing.

32. Request the Province to amend Section 29 of the *Ontario Heritage Act*, to provide for a more efficient process as follows:

a) allow an owner to object to a notice of intention to designate at a statutory public meeting before Council makes any decision respecting designation;
b) only permit an owner to appeal a notice of intention to designate to the Tribunal, or alternatively only permit an individual who has made an objection at a statutory public meeting to appeal a notice of intention to designate to the Tribunal;
c) make the decision of Council to state its intention to designate appealable, rather than the bylaw itself and delete the time limit for designation by-laws to be passed. Alternatively, extend the time period to pass a designation by-law to one year; and
d) If the opportunity to object to the Council's decision remains in the Act, then extend time periods for re-consideration of an intention to designate by Council to 180 days, allow for Council's decision to be appealed, and remove the timeframe within which a designation bylaw must be passed.

33. Request the Province to amend Part IV of the *Ontario Heritage Act* to provide clarity on the relationship between the individual heritage values and attributes of properties within the Heritage Conservation Districts and the values and attributes of the District, particularly as it pertains to alterations.

34. Request the Province to amend the *Ontario Heritage Act* Subsections 33(5) and 34(4.1) to change the headings to "Notice of Incomplete Application" and to add the words "that the application is incomplete" after the words "notify the applicant" for clarification.

35. Request the Province to amend the *Ontario Heritage Act* to extend time periods for consideration of alteration from 90 days to 180 days by deleting "90" and replacing it with "180" in Subsections 33(7)1 and 34(4.3)1; and/or make amendments to the *Planning Act* to state that where an application to alter or demolish is made under Sections 33 or 34 of the *Ontario Heritage Act* that the timelines in the *Ontario Heritage Act* prevail to the extent of any conflict for the purposes of the date an appeal may be made under the *Planning Act* regarding a *Planning Act* application.

36. Request the Province to make the decision of Council to state its intention to designate appealable, rather than the by-law itself, and extend the time period to pass a designation bylaw to one year.

Growth Plan Recommendations

37. Request the Province to revise Proposed Amendment 1 of the Growth Plan, 2017, policies and mapping to recognize and include additional Provincially Significant Employment Zones in the City of Toronto, including the City's major office parks.

38. Support the inclusion of OPA 231 as a matter in process that should be transitioned and therefore not subject to a "A Place to Grow" provincial Plan and request that the Province modify O. Reg. 311/06 to add any decision made by Toronto City Council on the day before enactment of the proposed Amendment 1 to the Growth Plan, 2017, but are currently under appeal at the Local Planning Appeal Tribunal (LPAT).

FINANCIAL IMPACT

There are no financial implications arising from the recommendations in this report.

Proposed Bill 108 is removing development charges (DCs) for growth-related parks and capital facilities from the *Development Charges Act* and rolling these into a capped community benefit charge regime in Section 37 of the *Planning Act*. About $924 million in DC funding is allocated to growth-related park and capital infrastructure projects in the City's 2019-2028 Council Approved Capital Budget and Plan (excluding carry forwards), with the largest amount being allocated to Parks, Forestry and Recreation (about $697 million). This funding supports parks, new child-care facilities, libraries, recreational facilities and improvement to existing facilities to address demand from development activities in communities across Toronto.

Proposed Bill 108 is also removing the alternative parkland rate and limiting the use of parkland base rate under Sections 42 (parkland) and 51 (plan of subdivision) of the *Planning Act*. These tools are primary funding sources for new parkland and park and recreational improvements to support development, accounting for about $369 million in Parks, Forestry and Recreation's 2019-2028 Capital Budget and Plan.

Proposed Bill 108 is removing the existing Section 37 density/height bonus provisions in the *Planning Act* and replacing this section with a capped community benefit charge regime that rolls-up development charges for growth-related parks and capital infrastructure, parkland and other community benefits. In the last three years Section 37 has been tied to substantial development approvals across Toronto, securing over $90 million in funding to support local improvements to over 150 community facilities and responding to increased service pressures from development with additional height and/or density permissions.

Based on the City's preliminary review of proposed Bill 108, it is unclear as to the full extent of the financial impacts of the proposed amendments to the City, in part, because much of the detail will be in a yet-to-released provincial regulation. Based on the changes proposed by Bill 108 it would appear that the amendments would also impact the City with additional administration and operational burdens which may require Council to make decisions regarding the adjustment of city-wide service levels. Alternatively, this could include potentially considering increases to property taxes to fund community-oriented services, such as parkland, recreational centres,

libraries, daycare services, etc. and other community benefits necessary to build a livable community.

Staff will report further on proposed Bill 108 legislative and regulatory impacts as more details become available. Staff will also report through the 2020 budget process on any necessary curtailment of growth-related or other capital expenditures resulting from the enactment of Bill 108.

Equity Impact Statement

This report provides preliminary comments on Bill 108 which could have impacts on equitable access by diverse equity-seeking communities across the City, to community facilities, parks and affordable housing, arising out of fast paced growth and intensification of the City's complex and high intensity built environment. The report makes recommendations to mitigate impacts arising from the proposed legislation in order to maintain and improve the liveability of the City for all citizens, to ensure continued and meaningful community engagement in the city-building process and positive local economic outcomes and to ensure that the lead role that the City plays provincially in upholding the tenants of "good" planning practice, continues.

DECISION HISTORY

This report responds to the Province's May 2, 2019 release of Bill 108, the proposed More Homes, More Choice Act. The proposed legislation would, if passed, make changes to a range of existing legislation, including the *Planning Act*, the *Development Charges Act, 1997,* the *Local Planning Appeal Tribunal Act, 2017* and the *Ontario Heritage Act* with a stated objective of intending to bring new housing online faster and reducing development costs while still ensuring that growth pays for growth and a reduction in municipal costs, and providing more housing options which can help make housing more attainable for the people of Ontario. Notwithstanding the current review, City Council has been engaged over the years in advocating for changes to Ontario's land-use planning and appeal system, the most recent being:

- Planning and Growth Management Committee Report PG16.6. "Response to Provincial Consultation on Reforming the Ontario Municipal Board (OMB), adopted as amended by Toronto City Council on December 13, 2016. http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG16.6

- Planning and Growth Management Committee Report PG23.7. "Bill 139 - Proposed Amendments to the Planning Act and Province's Land Use Planning Appeal System" adopted as amended by Toronto City Council on November 7, 2017. http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG23.7

COMMENTS

Proposed Bill 108

A stated objective of proposed Bill 108 and the accompanying Housing Supply Action Plan is to boost housing supply to address housing affordability. The legislation, however, contains no provisions to actually deliver affordability across the province's varied housing markets. Instead, it relies on the real estate market to freely pass along any reductions in development costs as savings for purchasers.

There are many factors that influence housing supply and affordability. They include land and constructions costs, mortgage rates, and expectations for project profit. Toronto sets it growth-related requirements in consideration of development viability and based on the principle that "growth pays for growth". An analysis of typical total project costs for a residential development shows that municipal growth-related requirements generally represent less than 10% while construction and land costs represents over 60%. Further, analysis identifies that the market impacts of municipal growth-related requirements, such as parkland dedication, is mainly putting downward pressure on the value of land for redevelopment as opposed to impacting overall purchase prices.

Like municipalities across Ontario, Toronto shares the objective of providing more housing choice to meet residents' needs, and approves more housing supply every year than can be constructed. With 140,441 approved but unbuilt residential units, and an additional 167,309 units currently under review, the need to plan for Toronto's long-term liveability and manage the impacts of growth is of paramount importance.

Proposed Changes to the Planning Act - Schedule 12 of Bill 108

Schedule 12 of Bill 108 proposes amendments to the *Planning Act*. Amendments to the *Planning Act* brought about by Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017* have been largely repealed. The proposed changes will have an impact on both the timing and approach taken by a municipality to evaluate development applications and by the LPAT to adjudicate an appealed application. Staff will undertake additional analysis and report back to Council once the regulations have been released and/or once the legislation comes into effect

Shorter Timelines for Appeals of a Municipality's Failure to Make a Decision on a Development Application

The timelines for municipal processing of development applications (before a right to appeal for a non-decision of Council arises), which had been extended in Bill 139, are now proposed to be shorter than the pre-Bill 139 timelines:

	Pre-Bill139	**Bill 139**	**Bill 108**
Official Plan/ Official Plan Amendment	180 days	210 days	120 days
Zoning By-law Amendment	120 days	150 days	90 days
Draft Plan of Subdivision	180 days	180 days	120 days

The Province contends that the reduction in processing timelines will have the effect of bringing more units to market in a timely fashion. Staff are of the opinion that this will not have its intended effect since shorter timelines could lead to more appeals for non-decisions and accordingly more time that a project is delayed at the LPAT awaiting a hearing. Furthermore, reduced timelines are impractical, and will impact the ability for staff to consult effectively with the public and to collaborate with applicants. The timelines being proposed are impracticable even for the most straight forward application and can have the effect of producing an adversarial process. Staff recommend that the Province increase the timelines to those contained in the current *Planning Act* which reflect the timelines put in place by the Province following extensive consultation with stakeholders.

Limited Permissions for "Inclusionary Zoning"

Municipalities are currently able to determine the areas where inclusionary zoning would apply. Unless otherwise prescribed by regulation, the proposed *Planning Act* changes in Bill 108 will limit a municipality's ability to apply inclusionary zoning only to protected major transit station areas, to locations where the municipality has adopted a development permit system and to location or locations where the Minister orders a development permit system to be put in place.

Currently, municipalities are able to determine inclusionary zoning areas subject to the completion of an assessment report analyzing housing need and demand and the financial impact of inclusionary zoning in accordance with provincial regulation. The City has advanced work on the required assessment report and developed proposed policy directions that are advancing to public consultation over the course of the spring and summer 2019.

The effect of linking inclusionary zoning to protected major transit station and development permit system areas will result in delays in getting an inclusionary zoning policy framework in place and creating new affordable housing. Amendments to the 2017 Growth Plan, which will come into effect on May 16, 2019, will enable municipalities to delineate major transit station areas in advance of a municipal comprehensive review, subject to the completion of detailed work in accordance with the protected major transit station area requirements of the *Planning Act*. The outcome will be that inclusionary zoning policies will not be able to be adopted until policies in respect of protected major transit station areas are adopted and approved. The establishment of a development permit system area is subject to a Minister's Order and also requires the completion of detailed analysis, again resulting in potential delays to the implementation of inclusionary zoning.

Restriction on Third-Party Appeals of Plans of Subdivision and Condominium Approvals

Changes are being proposed that will limit third-party appeals of plans of subdivision. Only the applicant, municipality, Minister, public body or prescribed list of persons are proposed to have the right to appeal an approval authority’s decision on a draft plan of subdivision, lapsing provision or any condition of draft plan approval. This change is furthering the notion that, like site plan applications, which already restrict third-party

appeals, there is merit to reducing appeal permissions for stand-alone plans of subdivision and condominiums in order to reduce application processing times and costs and to more quickly bring housing supply to market.

Other Matters

Staff note their support for two Planning Act provisions introduced under Bill139 that remain in place and have not been affected by the introduction of Bill 108 including:

Two-year freeze on secondary plan amendments, zoning by-law amendments and minor variances: The two-year prohibition on requests for amendments to secondary plans is proposed to remain, together with the two-year prohibition on zoning amendments/minor variance applications following the approval of a comprehensive zoning by-law or site-specific zoning by-law amendment.

No appeals of the Minister's decisions: There continues to be no right to appeal the Minister's decision if the Minister is the approval authority of an official plan or official plan amendment, including in the case of municipal comprehensive reviews (an "MCR") and official plan review. This is particularly relevant since "A Place to Grow", 2019, which updates the Growth Plan for the Greater Golden Horseshoe, 2017, permits some employment land conversion without an MCR.

Recommendations Regarding Planning Act Changes Introduced by Bill 108

Staff recommend that the timelines established for review of *Planning Act* applications before an appeal is permitted to the LPAT be returned to the timelines that were in effect under Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*.

Staff also recommend that municipalities be permitted to utilize inclusionary zoning provisions of the *Planning Act* in broader situations than the proposed protected major transit station and development permit system areas.

Proposed Changes Limiting the Ability to Plan for Liveable Communities - Schedules 3 and 12 of Bill 108

The Province has stated in its summary document for the More Homes, More Choice Housing Action Supply Plan that its intention is to ensure that "growth pays for growth". This is an important principle to ensure liveability. At the same time, the Province has stated that changes to the current system are needed to provide for more certainty with respect to what community infrastructure and benefits may be required as a condition of development.

Bill 108 proposes to repeal the tools municipalities currently use to secure community infrastructure including Section 37 (density bonusing), Section 42 (parkland dedication), Section 51.1 (parkland dedication – plan of subdivision), and the growth-related park and capital infrastructure component of development charges. At the municipality's election these tools could be replaced by the Community Benefit Charge ("CBC"). The CBC would then apply to most applications, above a minimum threshold, and will act as

the only development-related tool for municipalities to raise community infrastructure capital to meet the objective that growth pays for growth.

Municipalities Directed to Deliver Complete Communities

Amendment 1 to Growth Plan which will be in full force and effect on May 16, 2019 maintains the requirement for the provision of public recreation facilities to support complete liveable communities. Convenient access to public service facilities and parks contribute to vibrant neighbourhoods. People choose to live in neighbourhoods that have these amenities. In turn, these amenities are what make housing developments successful, attract investment and enable communities to thrive over the long-term. The development industry frequently uses the amenities in marketing their projects.

To deliver healthy, vibrant communities, municipalities need to have access to effective development-related tools to secure parkland and community infrastructure.

City Uses Range of Legislative Tools to meet Provincial Requirements & Deliver Liveable Communities

The City uses provisions under the *Planning Act* to secure city building and community infrastructure such as parkland, community recreation centres, library improvements, non-profit arts, cultural, community or child-care facilities, conservation of heritage buildings, transit improvements and purpose-built rental housing.

Section 37 is used to secure city building and community capital facilities through zoning by-law amendments that authorize increased height and density of development. Bill 108 repeals current Section 37 provisions and replaces them with a Community Benefits Charge.

Between January 1, 2016 and December 31, 2018, in accordance with the Official Plan and in agreement with applicants, Section 37 was used to secure over $92 million in community benefits to address added pressure from the approval of significant new development worth billions. A further $91 million was secured for 150 specific community facilities, including:

- $23.919M for affordable housing and Toronto Community Housing improvements;
- 33 contributions to parkland and/parks improvements ($18M);
- 20 public agency spaces including non-profit arts, cultural community or institutional facilities ($12.85M);
- 8 community recreation centres ($10.3M); and
- 6 Toronto Public Library capital improvements ($1.4M).

Section 42 of the *Planning Act*, which has been in place legislatively since 1973, enables municipalities to require park or other recreational uses as a condition of development or redevelopment. There are two key components of this authority: a base rate and an alternative requirement. The base rate is two per cent of the land area for commercial or industrial development and five per cent of the land area for all other uses. The alternative requirement permits municipalities to set their own rates up to a maximum of 1 hectare/300 units for land and 1 hectare/500 units for cash-in-lieu.

Municipalities may elect to require land dedication or cash-in-lieu which can be used for parks or other public recreational facilities. This rate is established by by-law and a municipality's Official Plan is required to have policies related to the provision of parks and the use of the alternative requirement. The ability for municipalities to use an alternative rate recognizes that the base rate (2 and 5 per cent) geared towards typical greenfield development scenarios fails to address the parkland demand and pressures generated by more intense forms of development particularly in established and fast growing urban settings.

Toronto has had its current alternative rate in place for over 10 years. Toronto's rate is 0.4 hectares/300 units which is capped at 10 per cent of sites under one hectare, 15 per cent for sites over one hectare and 20 per cent for sites over 5 hectares. Toronto's rate is applied to the residential component of development in parkland acquisition priority areas across the city.

Section 51 (1) of the *Planning Act* likewise enables municipalities to require the base rate (2 and 5 per cent) or an alternative rate of 1 hectare/300 units for plans of subdivision. Municipalities may do so without a by-law in effect if there are policies dealing with the provision of parks and the rate is outlined in its Official Plan policy. For plans of subdivision, there is a single maximum alternative rate of 1 hectare/300 units, not differentiated between land and cash-in-lieu. The City applies the same alternative rate framework as noted above for development secured through plans of subdivision under Section 51.

The *Development Charges Act, 1997* currently enables municipalities to include growth-related park and capital infrastructure in the development charge by-law to account for new facilities and services required to support growth. The growth-related park and capital infrastructure charges includes parks improvements, recreational facilities, libraries, child-care, pedestrian infrastructure and shelters.

Housing Supply Can Be Delivered in Lock-Step with Securing Community Infrastructure

The City monitors the development pipeline and assesses the progress to meeting Growth Plan targets for new housing. There were 242,081 units built from 2002 to 2018 in Toronto and a further 140,441 units that have received their first Planning approval but not yet built between 2014 and 2018, and an additional 167,309 units in projects currently under review. Just 17 years into the Growth Plan’s forty-year forecast period, this a total of 382,522 units or 96% of the units required to accommodate the household growth to 2041. However, on an annual basis, over the past five years, Council has approved more units than were completed. If all of these units were realized and occupied at the average number of persons per household in apartments in buildings of 5 or more storeys, their estimated population could be 540,000 to 620,000 people, about one-fifth of the City's total population in 2016. Thus the need to plan for Toronto's long-term liveability and manage the impacts of growth is of paramount importance.

Toronto's approved new housing supply has occurred concurrently with the City’s comprehensive approach to city building. This approach is underpinned by the principle that good planning requires development to contribute to delivering community infrastructure (i.e. growth pays for growth). Bill 108 presupposes that securing

community infrastructure has contributed to constraining the supply of new homes, while the data indicates that Toronto's housing completions and approvals are outpacing Growth Plan expectations.

Today's Development Intensities Require Calibrated Tools to Meet Growth Driven Needs

A key aspect of growth in Toronto is intensification of development. Generally, development sites are decreasing in size and accommodating more people in more units. Components of this trend include:

- Toronto's additional population will be housed primarily in vertical forms, with over 95% of new housing today being constructed in buildings greater than 5 storeys;
- 88% of all new units being proposed in Toronto are in a tall building;
- City-wide, approximately 65 per cent of sites are less than 0.5 hectare (1.2 acres), and 80 per cent of sites are less than one hectare (2.47 acres). Half of all units that have not yet achieved building permit are located on these small sites;
- In new developments, the highest intensities are found along higher order transit routes. These projects average 1,110 units per hectare - which is equivalent to 2,741 units or over 4,500 people per acre;
- City-wide, mid-rise and tall buildings are being proposed on larger sites that used to be developed as low-rise subdivisions; and
- Since 1996, the size of new residential units has declined an average of 25 per cent across the city, placing additional pressure on existing parks and community facilities.

New development is delivering smaller units and more units per project, which translates into more residents using public facilities and public parks. These intensities are placing measurable pressure on Toronto's community infrastructure and parks. For example, over the next 15 years, 87 per cent of Toronto's census dissemination blocks (Statistics Canada's smallest geographic measurement unit) will see a reduction in parks provision due to growth with 17 per cent of the dissemination blocks having a pronounced reduction. The Council-adopted Facilities Master Plan has identified a need (based on the development pipeline) for $860.7M investment over the next 20 years to maintain provision rates in the face of a growing city.

Bill 108 Proposes to Repeal Municipalities' Current Tools Supporting Growth

As part of the proposed Planning Act changes the Province is proposing to repeal Section 37, which is used to support local community improvements to address added pressures from significant development. In its place, the Province proposes to introduce a new tool, the Community Benefits Charge ("CBC"). The proposed CBC regime will replace the existing density bonusing provisions in the Planning Act, development charges for discounted services (i.e., parks and community facilities), and in some cases, parkland dedication; essentially blending local and city-wide growth-related tools. And, unlike current Section 37 provisions which are intended to apply to increases in height or density above what the existing zoning would permit, the CBC may be imposed in respect of development or redevelopment irrespective of whether increased height or density is being sought by the applicant. .

The proposed CBC can be imposed on developments or redevelopments that require a zoning by-law amendment or minor variance; a plan of subdivision, consent to sever or part lot control exemption; a condominium approval; or the issuance of a building permit. Bill 108 also sets out the following with respect to a CBC:

- A municipality may by by-law impose a CBC against land to pay for capital costs of certain facilities, services and matters no longer proposed to be captured within a development charge by-law and for other facilities as may be prescribed. A CBC is a cash payment based on a percentage of the value of the land being developed or redeveloped;
- Before passing a CBC by-law, municipalities will be required to prepare a "community benefits charge strategy";
- A future regulation will identify what is required to be completed for the strategy and any other facilities, services and matters and a maximum specific rate that can be included in a CBC by-law. Provincial staff indicated in its technical briefing after the proposed Bill 108 that the maximum rate would be established in consultation with each municipality;
- The amount of the CBC will not exceed an amount equal to the prescribed percentage of the value of the land as of the day before the day the building permit is issued in respect of the development or redevelopment. (The prescribed percentage will be set out in a forthcoming regulation);
- A municipality may allow a land-owner to provide contributions in-kind (facilities, services or matters required because of development), the value of which will be subtracted from the site's CBC requirement. The City cannot require in-kind facilities, services or matters;
- There is no authority in proposed Bill 108 to enter into or register agreements binding on future owners regarding in-kind contributions; and
- The Province will have the authority to exempt certain types of development from the charge.

Repeal of Alternative Parkland Dedication Requirement.

The Province is also intending to repeal the provisions which enable municipalities to have an alternative parkland dedication requirement for residential uses under Section 42 (parkland) and Section 51 (plan of subdivision) of the *Planning Act*.

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 CBC by-law in-force. Without a CBC by-law, the 2 and 5 per cent dedication requirements continue to be required to be set out in a by-law and the municipality determines if an application is providing land or cash in-lieu.. However, the regulation which prescribes the maximum rate and other details have not yet been released and are required to fully understand whether the CBC is an effective replacement to the alternative requirement or Subsection 42(1)**.** This is also particularly important to understand as the CBC will need to be used by the City to both acquire new lands for parks and recreation purposes, as well as to make improvements to existing parks to support growth.

Bill 108 has likewise repealed the alternative rate provision for plans of subdivision. In plans of subdivision, which ensure the suitability of the land for development, municipalities will not be able to apply a CBC by-law if they also wish to require parkland in a subdivision. In other words, municipalities will have to make a choice to secure parkland at five percent or receive payments towards other, necessary community infrastructure such as child-care facilities and libraries.

This is a significant departure from the current system where a municipality typically requires the dedication of land for new parks and a range of in-kind facilities and/or cash contributions to support the daily needs of residents in these new communities. To this end, proposed Bill 108 moves away from the Province's stated 'growth pays for growth' objective and sets the conditions for two tiers of neighbourhoods in Ontario municipalities: those completed before Bill 108, where residents benefit from local community infrastructure versus neighbourhoods developed in a post-Bill 108 environment where neighbourhoods may have limited facilities and parks to support daily life.

Development Charges will no Longer Contribute to Community Infrastructure

The City is currently funding a range of parkland improvements, community recreation centres, child-care, libraries and related facilities using development charges. Under proposed Bill 108, a development charge by-law can no longer be used for these matters. At a yet unknown date prescribed by the Province, growth-related park and community infrastructure of development charge by-laws will be of no force and effect, even if a CBC strategy and by-law have not yet been adopted.

Bill 108's proposed *Development Charges Act* changes has implications for the delivery of new child-care spaces to support growing communities across Toronto. The Children's Services' 10-Year Capital Budget and Plan totals $83.032 million and includes financing of $20.077 million (24.2%) from development charges to support 12 childcare centre projects and the addition of 583 spaces.

Likewise, development charges are used to support the Toronto Public Library capital building program, information technology assets and infrastructure, and the delivery of online library services. The demand for these services continues to grow each year and the aging infrastructure needs to be maintained, replaced or enhanced to meet demand.

Toronto Public Library's 10-Year Capital Budget and Plan totals $309.412 million including $103.973 million (34%) from development charges and $5.345 million of Section 37 funding (2%) to support the expansion and renovation of 21 branches and 4 technology projects that continue the implementation of the digital strategy. In addition, library collections, which are included in the operating budget, are also currently eligible for development charges for the growth-related portion. The Library's 2019 operating budget includes $20.414 million for the purchase of collections, of which $4.199 million is from development charges.

Parks, Forestry and Recreation's 10-Year Capital Budget and Plan totals $1.889 billion including $697 million (37%) from development charges to support investment in over 100 parks and parks related facilities (including 2 ferry boats); and 28 recreation

facilities (including 19 community recreation centres and expansions, 4 arena and ice facilities, and 5 pools) in Toronto's neighbourhoods.

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 parks and community infrastructure in all communities across Toronto.

Extent of Changes Cannot Be Fully Assessed Without the Regulations

Although the Province's stated principle is that 'growth will pay for growth', the City cannot fully assess the impact of the proposed changes to community infrastructure delivery without reviewing the yet-to-be-released Provincial Regulations. This raises the following questions:

- What will the land value percentage cap on the community benefit charge be? Will municipalities be consulted on the cap, and will it reflect differences in land values across municipalities?
- Bill 108 indicates that some types of development will be exempted from the community benefit charge, what will those be?
- Bill 108 indicates that some facilities, services and other matters will be exempted from the community benefit charge, what will those be?
- Will the municipality be able to determine how the community benefits charge is allocated across services?
- What will be the requirements of the community benefits strategy?
- What will the land appraisal timelines be?
- What system will apply to matters currently before the LPAT? and
- What happens in the intervening period as it relates to parkland while a city is preparing its community benefits charge strategy and by-law(s)? It appears that municipalities will only have the ability to secure the *Planning Act's* base rate for residential developments that did not have a by-law passed prior to the effective date.

Bill 108 Fundamentally Affects Municipalities' Ability to Plan for Liveable Communities

Key issues with the proposed legislation, as it relates to community infrastructure, are outlined below:

Bill 108 is a major departure from the fundamentals of good land use planning: The Province has historically recognized that parks are a central feature of land use planning. The Province has also acknowledged the role that development has in delivering parkland and first enabled municipalities to use an alternative rate in 1973. Bill 108, as proposed, forces municipalities to choose between the base parkland dedication rate and all the other components of liveable communities that are outlined in the Growth Plan itself.

Base rates for land dedication will, in the majority of instances, not generate enough land for a functional park: The *Planning Act's* base rate is only effective on large sites for traditional low-rise subdivisions. With the base rate, the majority of development projects (60 per cent) in Toronto will be required to dedicated less than 200 square

metres of parkland which does not support the needs of more intense developments or provide an area sufficient to provide park programming.

Base rates for land dedication will not generate enough parkland to support the need generated from development: As new residential development has taken an increasingly vertical form, the proposed policies will severely limit the City's ability to achieve effective parkland dedication to support the needs generated by development.

A percentage of land value does not reflect the cost of delivering public service facilities, with the exception of acquiring land for such services: Construction costs for community facilities are relatively constant across the city. Land values; however, are not. Today, construction costs for a typical community centre are approximately $600 per square foot in most areas of the city irrespective of land values. Areas with lower land values may not generate sufficient funds to support necessary infrastructure and this could result in disparities. Further, land values fluctuate and it would be difficult to set a rate based on land values to cover the cost of constructing facilities.

New neighbourhoods need both parks and other community infrastructure: Communities are more than just housing. The current proposal forces municipalities to choose between providing parkland, or collecting fees to contribute to the delivery of community infrastructure which is not only at odds with good planning, but is also at odds with the *Planning Act* and provincial policies and plans. Both are essential to support people's needs and the intensification of communities.

Parks are green infrastructure: Proposed Bill 108 does not recognize that parks are a critical piece of municipal infrastructure and a recognized component of green infrastructure as defined in both the PPS and Growth Plan. They help clean the air, recharge the groundwater, clean watercourses, limit damage that might arise from flooding and soil erosion and are essential for maintaining physical and mental health. In the context of extreme weather events, it is not a reasonable expectation for municipalities to choose between enhancing and expanding the parks system and other necessary community infrastructure.

Fairness: Parkland dedication policies that are based on site size alone require a disproportionate dedication from lower-intensity developments. A four-storey apartment provides the same amount of parkland dedication as a 48-storey tall building on sites of the same size even though the tall building is eight times more dense. On average, if the base rates are applied, this equates to approximately 0.45 square metres of parkland per person for tall building developments, 0.91 square metres for mid-rises and 2.3 square metres per person for low-rise developments.

Land values are not a proxy for need: Areas with high concentrations of tall building developments have higher land values. In these areas, the cost of acquiring land for either community facilities or parkland is likewise high which would potentially consume any static rate established through the proposed CBC regime on a city-wide basis.

Delivering community infrastructure requires long-range capital planning: Bill 108 proposes to let developers "lock-in" their development charge at the date of a specific planning application and CBC rates at the date of the first building permit. Locked-in

lower fees reduces or eliminates the incentive for timely application for building permits. For municipalities to prepare capital plans, there needs to be certainty that fees and charges are indexed and correlate with increasing construction costs. Bill 108's approach will limit municipalities' ability to be forward thinking in capital plans, particularly if once payments are made, they are no longer calibrated to the cost of delivering new community infrastructure.

Toronto is a diverse city with diverse needs: Completing a single community benefits charge strategy for a city with needs as diverse and growth as intense as Toronto is a significant undertaking. Without clarity on the Provincial Regulation, it is assumed that such a Strategy would require detailed capital planning and extensive public consultation. Council has adopted various city-wide plans, such as the Child Care Growth Strategy, Parks, Forestry and Recreation's Facilities Master Plan and Toronto Public Library Facilities Master Plan, while others, such as the Parkland Strategy, are under development. Adequate transition between the current legislation and any amendments needs to be provided so that the City can complete the Strategy and bring forward the CBC By-law.

In-kind dedications expedite facility completion and meet people's needs sooner: In the 4 years, the City has secures 106 parkland dedications, 4 community centres and 5 childcares being constructed by developers and secured through Section 37 and/or Section 42. In addition to facilities identified in zoning by-laws, enabling the City to require in-kind dedications means that residents of new developments can access facilities earlier. A recent example of this partnership with developers was the Parkway Forest redevelopment which included the delivery of a new community centre along with a broad range of housing sizes and tenures.

Recommendations Regarding Development Charges & Planning Act Amendments

The City recommends the following in response to the Province's proposed change to the structure of community infrastructure and parkland dedication:

- Enable municipalities to require both community benefits and parkland dedication on individual sites or in plans of subdivision to achieve complete communities;
- Classify Parks and Recreation and Emergency Medical Services as growth-related infrastructure and preserve their eligibility for development charges;
- Enable municipalities to set an alternative rate for parkland that is calibrated to residential intensity;
- Retain current *Planning Act* provisions that permit municipalities to require parkland dedication (as land) as a condition of development or redevelopment for individual sites and plans of subdivision;
- Index the Community Benefit Charge to the cost of construction for new facilities.
- Set a scale of CBC caps based on an analysis of local area sub-markets and in consultation with municipalities. Update the analysis and caps at regular intervals;
- Do not repeal growth-related park and community infrastructure of the *Development Charge Act* in advance of the completion of the CBC Strategy and CBC By-law; and
- Retain the dispute resolution measures for land appraisals.

Changes to the Planning Appeal Process introduced through Proposed Amendments to the Planning Act & the Local Planning Appeal Tribunal Act - Schedules 12 and 9 of Bill 108

Bill 108 represents a fundamental shift in how the Province views the land use planning appeal system in Ontario. It proposes to repeal many of the significant amendments introduced through Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017.

According to the province, changes proposed by Bill 108, to the land use planning appeal process, are intended to simplify and streamline the adjudication process to help bring new housing online faster, reduce development costs, accelerate local planning decisions and provide more housing options for Ontarians.

Repeal of Two-Step Appeal Process and Wider Grounds for Appeal

Bill 108 reverts back to the former, more adversarial, OMB process. It proposes to repeal the two-stage appeal process, and the mandatory testing for consistency and conformity with provincial policies and plans and return to a single "de novo" hearing. Specifically, Bill 108 proposes to repeal the requirement that appeals be heard exclusively on the basis that approval of the given planning matter (such as official plan and zoning appeals) is inconsistent with a provincial policy statement, fails to conform or conflicts with a provincial plan or fails to conform with an Official Plan (in the case of a zoning bylaw). Appellants can still raise these grounds of appeal (and provide supporting reasons) but would no longer be limited to just those grounds.

Changes to Procedural Control over Hearings

Existing restrictions on a party's ability to introduce evidence and call and examine witnesses at hearings introduced by Bill 139 are proposed to be repealed by Bill 108. The LPAT will now have the power to limit any direct 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.

Bill 108 proposes to limit the submissions by non-parties to a proceeding before the Tribunal to written submissions only but provide the Tribunal with the authority to examine the person who made the submission. In addition, Bill 108 proposes to now provide for mandatory mediation or other dispute resolution processes if prescribed, in specified circumstances and repeals provisions relating to the Tribunal's ability to state a case in writing for the opinion of the Divisional Court on a question of law.

Implications of the Proposed Amendments to the Planning and LPAT Acts

Bill 108 will likely result in an increase in appeals of planning applications, by limiting municipal opportunities for comprehensive front-end-of-process file management and dispute resolution processes, such as mediation or other forms of collaborative decision-making, due to greatly expedited development application processing

timelines. Councils may proceed more quickly to refuse an application in order to avoid a non-decision scenario in the absence of the opportunity to fully understand the planning implications of the application.

The return to de novo hearings based on wider grounds for appeal, and the reinstatement of the power of the LPAT to be a substitute decision maker for Council may have the effect of reducing regard for City Council decision-making authority with regard to the disposition of planning matters.

Recommendations Regarding Planning & LPAT Act Changes Introduced by Bill 108

Staff recommend that the Province retain the existing *Planning Act* grounds for appeals of zoning by-laws and official plan amendments to only include testing for consistency with provincial policy statements, conformity with provincial plans and (for zoning by-laws) conformity with the Official Plan and to incorporate other legislative measures that would provide for more deference to the decision-making powers of municipal councils.

Proposed Changes to the Development Charges Act - Schedule 3 of Bill 108

Bill 108 introduces significant changes to the financial tools available to the City. *Planning Act* changes with respect to Section 37 (density and height bonusing), Section 42 parkland dedications and payments in lieu, along with proposed changes to development charges (DCs) for growth-related park and community infrastructure will be replaced with a capped community benefits charge. The affected DCs comprise about 25% of the City's residential DC recoveries.

Proposed Bill 108 also restricts the *Development Charges Act, 1997* to the following services: roads, water, wastewater (sewer), storm water management, transit, waste diversion, policing, fire and electrical (not applicable to Toronto) and any other services prescribed. These services will be subject to changes as to when payments are calculated and when payments are to be made.

The Province has indicated in press releases that the changes are intended to be revenue neutral to municipalities. This is a key commitment because the impact of these changes could be significant for funding of growth-related infrastructure. Annual City DC revenues impacted by proposed Bill 108 changes and therefore at risk are expected to be about $500 million per year once the current DC by-law rates are fully phased in.

Most of the changes to the *Development Charges Act, 1997* have no direct link to housing supply or price. For municipalities, there is the potential for a simpler and more flexible regime depending on implementation details, but infrastructure cost recovery seems likely to be subject to additional, rather than fewer, constraints. The chief beneficiaries of the proposed changes appear to be land developers, for whom price certainty, deferred payment and avenues for regulatory constraints on the application of the new community benefits charges will reduce risk. It remains to be seen whether this would translate into benefits to purchasers and occupants of new development.

Proposed Bill 108 also includes changes to the statutory exemptions from DCs for second suites in new detached, semi-detached, and row houses in primary dwellings and ancillary buildings or structures (such as coach houses and laneway houses). Council had directed staff to report back on this type of measure. Preliminary analysis indicates that it can improve supply at low cost if paired with requirement that the second unit be subordinate in size to a significant degree**.** If passed these exemptions would become mandatory**.**

The following provides a preliminary assessment of proposed Bill 108's financial implications and risk exposure to the City**.** As noted previously, much of the details are to be set out in the provincial regulation that have yet to be released, and these impacts will be assessed as more information becomes available.

Potential Financial Impacts

The proposed changes represent a significant rethink of the financial tools available to the City. Some changes, such as the separation of DC rate crystallization and collection dates as well as capping of the community benefits charge, would reduce revenues and have cash flow implications for the City.

Some of the changes warrant further consideration. For example, there is no linkage between Bill 108's proposal to use land values as the basis for community benefits charge and municipal construction costs which are to be funded through the charge. Land values vary across the city while service costs are relatively constant. Therefore, a growth-supported community benefit charge will fluctuate impacting the City's ability to deliver new parks and community infrastructure. In addition, the proposed dispute resolution process for the valuation under the community benefits charges will increase red tape and slow the funding available. Financing of land developer DC costs at non-market rates introduces revenue and collection risks.These changes could have significant implications on the City's ability to fund community infrastructure, such as child- care facilities, libraries and recreational facilities across Toronto.

The CFO will report on recommended strategies and impacts associated with the revenue expectations, such as implications on the growth-related capital plan or tax rate impact, as more information becomes available.

Section 37 and Section 42 Revenues & Funding

To support the pressures new development places on community infrastructure, the City secures funding under the *Planning Act's* Section 37 and 42, and has allocated approximately $490 million of this funding to programs and projects in its 2019 operating budget and 2019-2028 capital budget and plan, as noted below. Parks, Forestry and Recreation will have the most significant impact of all of the City's services, with approximately 80% of these funds contributing to secure parkland, park improvements and recreation facilities to support future growth.

Table 1: Section 37, and 42 Budgeted Funding 2019-2028 Capital Budget and Plan ($000s)

Program	Section 37	Section 42 - 2%/5%	Section 42 - Alternate Rate	Total
Children's Services	1,578			1,578
Economic Development and Culture	7,277			7,277
Facilities Management, Real Estate & Environment	2,704			2,704
Parks, Forestry & Recreation	32,852	337,963	31,370	402,185
Toronto Parking Authority	1,352			1,352
Toronto Public Library	5,345			5,345
Transportation Services	30,123			30,123
Waterfront Revitalization Initiative	23,109			23,109
Total	**104,341**	**337,963**	**31,370**	**473,673**

Notes: Section 37 estimates include preliminary carry forwards. Section 42 estimates include final carry forwards.

Development Charge Rate, Funding and Revenue Impacts

The growth-related park and community infrastructure component of DCs represent approximately 26% of the City's current residential charges (see details below) and are forecast to generate approximately $125 million in revenues annually after the rates are fully phased-in on November 1, 2020.

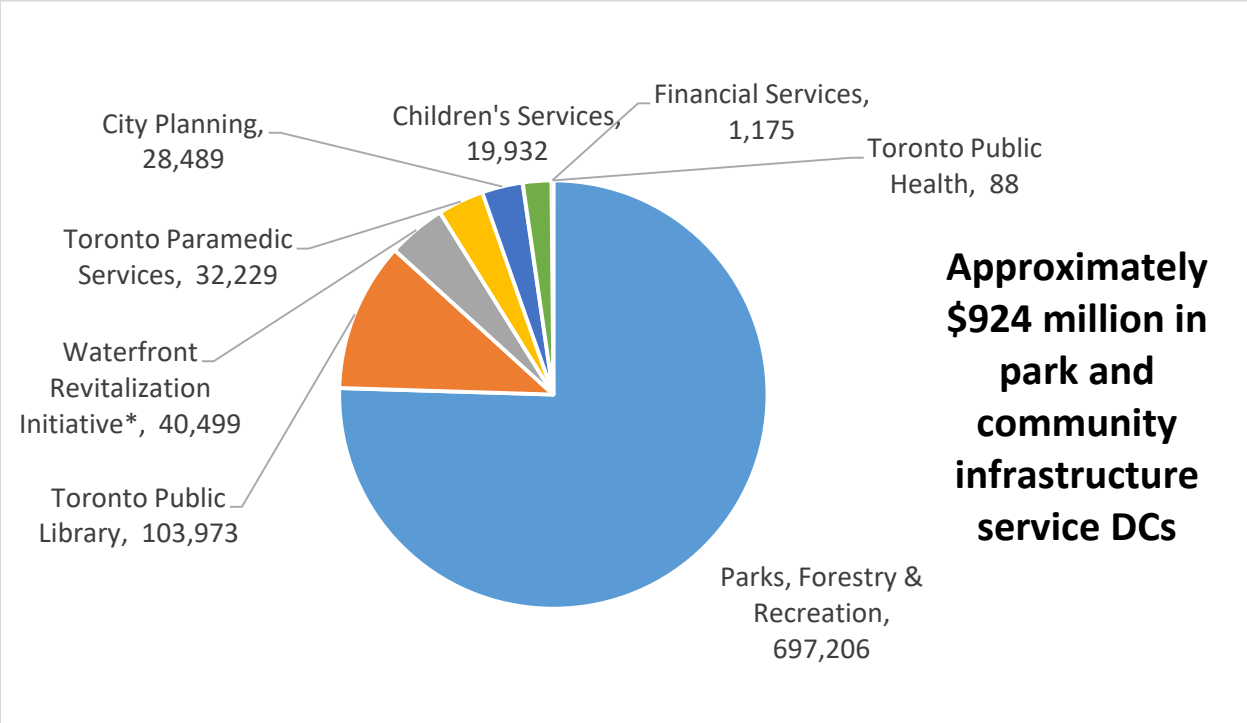
About $924 million in DC funding is allocated to growth-related park and community infrastructure capital projects in the 2019-2028 capital budget and plan, with the largest amount being allocated to Parks, Forestry and Recreation (about $697 million).

Table 2: Growth-Related Park and Community Infrastructure Proposed to be Removed from the Development Charges Act, 1997

DC Service	% of Residential Charge*
Parks and Recreation	13.12%
Subsidized Housing	6.39%
Library	2.49%
Shelter	1.01%
Child Care	0.96%
Development-related Studies	0.64%
Paramedic Services	0.61%
Civic Improvements	0.33%
Pedestrian Infrastructure	0.07%
Health	0.01%
Total	26.63%

* Effective Nov 1/19

Table 3: 2019-2028 Capital Budget and Plan - Growth-Related Park and Community Infrastructure DCs by Program ($000s)



*Note: Waterfront DCs are split between park and community infrastructure and engineered services and a breakdown was not available at the time of preparation. Estimates exclude carry forwards and DC funding to operating of approximately $30-45 million annually for growth-related debt service costs, affordable housing, library materials and DC administration.

DCs for the balance of services (i.e. 'hard services' are transit, roads, water, sewer, stormwater, policing and fire) represent approximately 74% of the City's current residential charges and is forecast to generate approximately $375 million in revenue annually once the rate increases are fully phased-inonNovember 1, 2020).

About $2,067 million in DC funding is allocated to "hard services" growth-related capital projects in the 2019-2028 capital budget and plan, with the largest amount being allocated to transit projects (approximately $829 million).

Other Changes to the Development Charges Act

Timing for the Collection of Payments :

- Currently, DCs are calculated and collected at the time of building permit issuance. The proposed changes will crystallize the obligation to pay DCs at rates that are in effect at an earlier point in time (e.g. when an application is made for site plan or zoning approval) and collected later;
- For some development (i.e. rental housing, institutional, industrial, commercial and non-profit housing), DCs would be paid in equal annual installments over a six-year period following the earlier of an occupancy permit or first occupancy. For all other developments, DCs would continue to be paid at the time of building permit issuance;

- These changes could have significant financial implications to the City as land developers will use early trigger points to avoid rate increases (the City's remaining scheduled 2018 by-law rate increases on November 1, 2019 and November 1, 2020. The deferred collection is effectively an unsecured loan from municipalities to developers with potential municipal exposure to collection administration and risk. Municipal borrowing capacity is not unlimited, and the cost or benefit will depend on interest rates set by regulation and the City's ability to fully recover costs through the community benefits charge; and
- The changes will result in additional administrative burden for differing collection timing and require updates to IT systems (e.g. IBMS).

Second Suites:

- The proposed Bill would allow second suites in detached, semi-detached, and row houses in primary dwellings and ancillary buildings or structures (such as coach houses and laneway houses); and
- Municipalities are required to exempt secondary suites from DCs which will have a corresponding financial impact.

Transition:

- DC by-laws that expire after May 2, 2019, and before a prescribed date to be set in provincial regulation shall remain in force until the earlier of: a) The day it is repealed; b) The day the city passes a community services benefits by-law; and c) A prescribed date.

Other changes

- Eliminating a 10% statutory reduction for solid waste diversion capital costs; and
- Exempting the conversion of communal areas to residential units in rental buildings.

Assessment and Next Steps

Potential Impact on capital expenditures - The development-related revenues outlined above will be subject to new rules and risks under the proposed legislation. Like other municipalities relying on these kinds of revenues to support growth related expenditures (i.e. growth pays for growth), revenue risk and uncertainty will require a re-assessment of expenditure plans. Even if revenues were to be maintained at the current level, which appears unlikely due to the new avenues for regulatory constraints, the new regulatory risks and delayed collection may require a more conservative approach to investment in growth-related infrastructure. Service levels can be expected to decline, and development may slow down where enabling infrastructure is delayed.

Potential impact on administrative processes - The new community benefits charge will require new processes that will take time to develop. Each development that previously could rely on a published DC rate schedule to determine payment obligations will in the future rely on an individual relatively more subjective and disputable property valuation assessment. This could introduce new delays. Also, land values have little relation to infrastructure cost (other than land purchase), and so the distribution of the tax burden under the community benefits charges will change relative to the DCs they replace. Remaining DCs for *'*hard services*'* are to be calculated upon a planning trigger such as

a site plan or zoning application. Clarity will be required about the threshold for the trigger, and systems to track these valuation dates in order to avoid disputes. It appears that the government's intention is to reduce procedural delays and improve fairness. To achieve this objective the regulations will have to be carefully crafted with input from municipal administrators.

New separation between DC calculation and timing of the payment - For the remaining DCs for 'hard services' the Bill would separate the payment calculation from payment timing by many years in most cases, and tens of years in some cases unless otherwise prescribed. This is a very significant change, providing cost certainty for developers without any financial investment. If the municipality builds the enabling infrastructure, it would more frequently be required to borrow the money, increasing public debt, cost and repayment risk. This is compounded by the proposal to defer payment for many forms of development over a 6- year period starting at occupancy. Again, this increases municipal borrowing, cost and risk. It amounts to construction loans to the applicant, at interest rates and security not set by the market, but through regulation.

Recommendations Regarding Proposed Development Charges Act Amendments

- Council endorse the principle that the changes proposed in Bill 108 should be revenue neutral to the City and that growth should pay for growth;
- Council authorize the Chief Financial Officer and Treasurer to provide input to the Province of Ontario on financial matters associated with Bill 108 including to request the Province to delete provisions to defer DC payment obligations and so restore the concurrent calculation and payment of DCs;
- Council request the Province to provide a thorough stakeholder consultation process in the development of the Regulations; and
- Council direct the Chief Financial Officer and Treasurer to report back through the 2020 budget process**,** in collaboration with impacted Divisions**,** on any necessary curtailment of growth-related or other capital expenditures resulting from the enactment of Bill 108.

Proposed Changes to the Ontario Heritage Act - Schedule 11 of Bill 108

Bill 108 includes substantial changes to the *Ontario Heritage Act* and will have impacts on how the City undertakes heritage conservation.

The Bill introduces appeal rights in relation to designation bylaws and alteration applications that do not exist under the current legislation. It establishes a new requirement to confirm a complete application for alteration and demolition applications and to make a decision in respect of these applications within a specified time period, failing which, there will be deemed consent.

Bill 108 establishes a notification and objection process for listing properties on the Heritage Register. The Bill also establishes a preliminary review process in relation to designations whereby a person may object to an intention to designate and Council must reconsider its decision in light of the objection within a specific time limit. Failure to pass a designation by-law within the set time line will mean that the intention to designate will be deemed to be withdrawn. Failure to initiate a designation process

within a set time period following the occurrence of a yet to be determined "prescribed event" will preclude Council from initiating a designation process entirely.

A new section 26.0.1 in the Act will require Council to consider a set of prescribed principles when exercising its decision-making authority under the Act. Regulations are not yet available, so it is unclear what the nature of these principles may be and what effect they will have on heritage decisions.

Notice to Owners regarding the Listing of Heritage Properties

Council will be required to provide notice to owners within 30 days of its decision to list a property on the Heritage Register. Regulations will prescribe the contents of the notification. Currently, the City of Toronto provides notice to owners in advance of the Toronto Preservation Board and Community Council meetings where recommendations for listing are made within a staff report.

Property owners will now be able to object to Council's decision to list a property and Council will be required to consider any objection and make a second decision to confirm or remove the listing. Council must then provide additional notice to the owner within 90 days of its decision. Under the new Section 27(3), the proposed amendments do not specify a time limit for objections.

Notice to Owners regarding the Designation of Heritage Properties, Amendments & Repeals of Designation By-laws

The Bill proposes that Council will not be permitted to give notice of an intention to designate a property under Section 29(1) of the Act more than 90 days after a "prescribed event," subject to exceptions that may be prescribed. There are currently no limits placed on when Council may provide notice of an intention to designate a property. What constitutes a "prescribed event" has yet to be defined by regulation.

Council will be required to consider and make a decision on a notice of objection to the designation of a property under Section 29(1) of the Act within 90 days after the end of the 30-day period during which a notice of objection may be filed.

Adjudication of Appeals of Designation By-Laws by LPAT

Designation by-law appeals will now be adjudicated by the LPAT. Formerly, City Council had the final authority for designation. Designations (and alterations) could be appealed to the Conservation Review Board whose decisions were non-binding on Council but who did review the merits of Council's original decision. Bill 108 will now give LPAT the final determination within the designation appeals process, with new abilities to dismiss appeals, to repeal or amend by-laws or to direct Council to repeal or amend the bylaw in accordance with a Tribunal order.

If Council does not pass a designation by-law within 120 days of publishing a notice of intention to designate (90 days following the end of the objection period), the intention will be deemed to have been withdrawn. If appealed, the designation by-law will not come into force until all appeals to the LPAT are withdrawn or dismissed.

If Council fails to pass a designation bylaw within the proposed timelines, it may recommence the process by making another decision to state its intention to designate. However, Council could be precluded from recommencing the process in the circumstance wherein a "prescribed event" has occurred in the interim period. .

Statutory Time Limits Regarding Provision of Various Notices, Decision Making & Passing of Designation By-laws

The introduction of new statutory time limits in relation to the provision of various notices, decision making and the passing of designation bylaws will require the implementation of an integrated tracking tool coordinated within City Planning, Clerks and Legal Services to ensure that the City is able to act in a timely manner. The inability to meet the new timelines would have significant negative implications for the protection of heritage resources.

Despite maintaining Sections 30(1) and (2) in the Act, which provide for the voiding of permits and interim controls on demolitions subsequent to Council issuing a notice of intention to designate, it is not clear whether these protections will continue until such time as an appeal in relation to a designation by-law has been finally determined by the LPAT. (Currently, a notice of intention voids permits (e.g. demolition) and properties are treated "as designated" for the purposes of the Act).

The proposed changes will result in changes to the City's process of listing and designating heritage properties by requiring Council to reconsider its decision to issue a notice of intention to designate should an objection be received. Should Council not reconsider its decision within the defined time periods (or fail to pass a designation bylaw), the intention to designate will be deemed to have been withdrawn. Should Council, following its consideration of an objection, adopt a designation bylaw, a person who objects to the bylaw will have the right to appeal Council's decision to the LPAT.

Depending on what constitutes a prescribed event, it may be necessary for Council to state its intention to designate a property prior to the submission of a development application. (Currently listing and designation of a property often occur in tandem with the planning process).

Principles Required to Designate Heritage Conservation Districts (HCDs)

Bill 108 enables the Province to introduce principles in relation to Heritage Conservation Districts that Council will be required to consider when making decisions about designating a district, or when making decisions affecting the District. Draft principles have yet to be released, and as such the implications of this new requirement are not yet known. Of concern would be the relationship between provincial principles and the stated objectives of the District. In addition, new language inserted in Section 34.5 (2) of the Act makes it unclear how individual property attributes are intended to be regulated within a district plan area which, by definition, is intended to manage change at an area-wide scale and which currently provides general policies and guidelines for alterations. Depending on the intent of the policy, this may require revisions to the

Council-approved guiding document for HCDs. City Planning will need to determine the level of revision required to HCDs currently under development and those under appeal.

Complete Application Requirements for Alteration & Demolition Permits

Council must make decisions with respect to alteration and demolition permit requests within 90 days of confirmation of notice of complete application (a new concept in the context of the *Ontario Heritage Act*). What constitutes a complete application will either be defined by regulation, or the Province will allow a municipality to define requirements by by-law. This has yet to be determined. Bill 108 establishes a new 60-day timeline for notifying property owners of whether their applications for alteration and demolition are complete. However, the Bill is unclear in terms of what would occur in the event of a notice of incomplete application.

The practice of Heritage Preservation Services staff to review heritage permit applications concurrently with Community Planning's review of planning applications remains a goal of the City. This practice has allowed conservation strategies to evolve within the planning process. New mandatory time limits may force the City to consider planning and heritage applications separately given that the timelines as they relate to complete applications under both the *Planning Act* and the *Ontario Heritage Act* may not align.

At present, the majority of heritage permits are issued through the building permit process, with no separate applications (or fees) required by the City under the *Ontario Heritage Act*. This streamlined approach to heritage permit review has been a significant cost and time savings for owners who do not require additional permissions such as a change to the existing zoning by-law. Heritage Preservation Services reviews over 2200 permits a year and on average 70% of those applications are given heritage approval within 3 days.

With additional emphasis on expeditious decision-making and mandatory adherence to a complete application review for all alterations and demolitions, City Planning will need to provide owners with a more formal application process, which will need to align with the planning application or building permit processes. If the proposed changes come into effect, staff will need to review and update Section 103 of the Municipal Code, which sets out the required contents of various applications made under the *Ontario Heritage Act* and which also describes certain actions that can be delegated to staff. In addition, the current process of combining alteration and designation reports in a single report will need to be examined.

Implications of Proposed Amendments to the Ontario Heritage Act

The proposed changes to the *Ontario Heritage Act* will challenge the ability of the City to conserve its heritage resources within a complex land use planning environment. The Bill provides for a back-end dispute model rather than a model providing for front-end consultation that would allow for Council to make a more informed decision in the first instance. The Bill lays out many new mandatory timelines and requirements that have the potential to further complicate the process for owners and the municipality. The loss of latitude for fluid decision-making will force the City to establish a rigorous application

procedure to ensure that all timelines are adhered to and the City's interests are protected. Given the volume and complexity of heritage permit applications, a standardized permit process and new fees will likely be required.

The proposed changes will impact the manner in which listings, designations, alteration and demolition applications are tracked. The local disposition of a first round of appeals of designations will need to be undertaken cross-divisionally. The intersection between heritage permits and other permits/planning applications will require reconsideration of the development review process. Revised Municipal Code requirements will also be a natural consequence of proposed changes.

Staff resources will need to be evaluated in light of the current volume of permit applications to ensure the delivery of heritage reports and notices occur within the specified timelines. Also, the proposed (substantially reduced) time limit for planning decisions to be made on zoning by-law amendments will create challenges for staff where heritage properties are involved in a planning application. Due to the various imposed time limits that will guide the designation reporting process, the committee report structure may need to be streamlined

Given the proposed timelines in the absence of new practices, procedures and resources, Bill 108 could result in the loss of heritage properties.

Recommendations Regarding Proposed Changes to the Ontario Heritage Act

Listings: To provide for a more efficient process for listings under section 27 of the Ontario Heritage Act, the proposed legislation should provide the opportunity for owners to object to a listing at a statutory public meeting in advance of the Council meeting and remove the opportunity to object following Council's decision. In order to provide interim protection for properties recommended for listing, it is further recommended that the Province include a proposed Subsection 27(9) which is applicable from the date that notice is given respecting the proposed listing. If the objection process is to be maintained as currently proposed in Bill 108, it is recommended that a time limit be established within which a person may object by adding to the end of Subsection 27(7) the words" within 30 days of the notice referred to in subsection (5)."

Designations: With respect to section 29 of the Ontario Heritage Act, reinstate Council authority over Part IV designations OR if the province is not inclined to remove the appeal right to the LPAT then:

- Provide for a more efficient process by allowing the owner to object to a notice of intention to designate at a statutory public meeting before Council makes any decision respecting designation;
- Only permit an owner to appeal a notice of intention to designate to the LPAT, or alternatively only permit an individual who has made an objection at a statutory public meeting to appeal a notice of intention to designate to the LPAT;
- Make the decision of Council to state its intention to designate appealable, rather than the by-law itself and delete the time limit for designation by-laws to be passed or alternatively, extend the time period to pass a designation bylaw to one year; and

- If the opportunity to object to Council's decision remains in the Act, then extend time periods for re-consideration of an intention to designate by Council to 180 days, allowing for Council's decision to be appealed, and removing the timeframe within which a designation bylaw must be passed.

Heritage Conservation Districts: Provide clarity on the relationship between the individual heritage values and attributes of properties within the HCDs and the values and attributes of the District, particularly as it pertains to alterations.

Alteration and Demolition Applications: Clarify what would occur in the event that the City issues a notice of incomplete application within the specific response time period. Recommend that outstanding material be required, following which the City must issue a further notice regarding completeness similar to requirements for complete applications under the *Planning Act:*

- The time period for Council's consideration of an application should only commence upon the issuance of a notice of complete application;
- Extend time periods for consideration of alteration/demolition applications to 180 days; or
- Where a related rezoning application has been made under the *Planning Act*, allow for the timeline for Council's consideration of an alteration or demolition application to align with its decision on the *Planning Act* matter, so long as that time period is longer than the time period that would otherwise be afforded to Council to make a decision on the alteration or demolition application.

Amendment 1 to Growth Plan, renamed to A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2019

Amendment 1 to the Growth Plan, 2017 was released on January 15, 2019, to which Council adopted specific requests to the Province at its meeting on February 26, 2019 (Decision History: Item PG2.4).

On May 2, 2019, the Province released "A Place to Grow", which will come into effect on May 16, 2019 and upon which all planning decisions will be required to conform. This new Plan will now replace the previous Growth Plan for the Greater Golden Horseshoe, 2017. Through "A Place to Grow", the Province intends to introduce more flexibility to planning and greater local autonomy. The following are the key policy changes introduced by the 2019 Plan, their likely impacts, and staff's preliminary analysis. These changes will have work program implications, which will be analyzed over the coming weeks and months.

Requests for Additional Provincially Significant Employment Zones (PSEZs)

The "A Place to Grow" Plan introduces 10 PSEZs in Toronto, which accounts for approximately 67% of the lands designated as Employment Areas in the Official Plan. These PSEZs would only be subject to conversions to non-permitted uses (including residential) during a Municipal Comprehensive Review (MCR), initiated by the City. PSEZs are intended to provide the basis of a regional economic development strategy. The PSEZ definition now includes the provision that these zones can consist of

employment areas as well as mixed-use areas that contain a significant number of jobs. Ministry staff will be continuing their due diligence and may identify additional PSEZ in the near term. A new policy allows municipalities to request the Province to review and update the identification of PSEZs.

The non-PSEZs within the City (approximately 33% of the City's Employment Areas) could be subject to conversion requests before the next MCR, provided that certain criteria are met. These criteria include: the demonstrated need for the conversion; proposed uses would not adversely affect the overall viability of the Employment Area; necessary infrastructure exists or is planned for the area; and a significant amount of jobs are maintained on the lands.

Non-PSEZs will still remain as Employment Areas and in the event Council determines that a non-PSEZ could be converted, local area studies should be undertaken prior to recommending any pre-MCR conversions. These local area studies will apply "A Place to Grow" criteria and put in place a planning framework to deploy future jobs through a consultative planning process with affected area residents and businesses. The 2019 Plan defines "office parks" as Employment areas designated in an official plan or areas where there are significant concentrations of offices with high employment densities.

Delineating Major Transit Station Areas (MTSAs)

The "A Place to Grow" Plan increases the MTSA radius to include a range between 500-800 metres around the station. The policy changes allow the City to delineate MTSAs in advance of the next MCR, provided that a very detailed implementation framework is brought into effect in accordance with Section 16(15) of the Planning Act. This Protected-MTSA framework must identify the number of residents and jobs per hectare, permitted uses and minimum densities with respect to buildings and structures in the area. This level of detail would be advanced through an implementing zoning by-law for a given study area.

Intensification Strategy

The "A Place to Grow" Plan requires that all municipalities develop a strategy to achieve intensification throughout the Delineated Built-up Area, within which the entire City is fully situated. A Place to Grow, 2019 removes the Policy 2.2.2.3.a, which encouraged intensification generally to achieve the desired urban structure, policy reference to anchoring growth management and intensification policies within an urban structure framework, in Toronto's case, Official Plan Map 2: Urban Structure. The Plan requires municipalities to identify appropriate development in strategic growth areas and transition of built form to adjacent areas.

Transition for Matters in Process or before the LPAT

Through a Regulation, the Minister identified OPA 231 (Employment Areas) as a matter that would be transitioned under the 2006 Growth Plan. The commenting period for this proposal is June 1, 2019. Staff support the identification of OPA 231 as a matter to be transitioned. However, the proposed Regulation does not include other matters that have received Council approval, but are still in process, and in a number of instances

have been appealed by one or more parties to the Local Planning Appeal Tribunal (LPAT). This includes a number of local area studies that were undertaken and approved by Council under the previous Growth Plan, 2017. These studies are recommended to be considered as matters in process that should be transitioned. One example is OPA 393, the Consumers Next Secondary Plan which was adopted by Council earlier in 2019 and was conducted under the Growth Plan, 2017. Other similar examples exist.

Recommendations Regarding Amendment 1 to the Growth Plan

It is recommended that Council support the inclusion of OPA 231 as a matter in process that should be transitioned and therefore not subject to "A Place to Grow". Staff also recommend that the Province modify O. Reg. 311/06 to add any decision made by Toronto City Council on the day before the enactment of the proposed Growth Plan Amendment, or currently under appeal at the LPAT, as matters in process that are subject to the Growth Plan, 2017. By providing for a proper transition regulation incorporating these matters, the delivery of municipally approved housing projects will not be jeopardized.

CONCLUSION

Bill 108, the More Homes, More Choice Act, passed First Reading on May 2, 2019. This omnibus Bill seeks to amend 13 different statutes. The proposed legislative changes repeal many of the amendments introduced through Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. Proposed Bill 108 will impact municipalities in many ways and fundamentally affect the City's ability to plan for liveable communities.

The report highlights proposed changes to those statutes that impact municipal land use planning, the development approval and appeal process, and heritage conversation and funding for community services, and provides an initial assessment of the proposed changes and their financial impacts. The full impact of many of the proposed amendments will only be assessed when implementation details related to these proposed amendments become available through the release of the provincial regulations accompanying the proposed legislation. In this regard, the Province has not issued any information as to the timing of the release nor the content of these regulations. As implementation information becomes available, staff will report to Council further on associated financial, process and staffing implications for the City.

According to provincial government publications, changes proposed by Bill 108 are intended to simplify and streamline the development approval and adjudication process to help bring new housing online faster, reduce development costs and provide more housing options for Ontarians. However, the proposed changes may also result in an increased number of development application appeals, adding to delays in delivering housing supply as a result of proposed shortened application processing timelines and changes to the LPAT adjudicative process. In addition, Bill 108 does not provide any mechanisms to ensure that any savings from reduced development charges and Section 37 and 42 *Planning Act* contributions are passed through to future home buyers and renters.

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