



Report: PDL-CPL-19-31

Region of Waterloo
Planning, Development and Legislative Services
Community Planning

To: Chair Tom Galloway and Members of the Planning and Works Committee

Date: August 13, 2019

File Code: D16-60

Subject: Proposed New Regulations under the Planning Act – Schedules 9 and 12 of Bill 108 (the More Homes, More Choice Act, 2019)

Recommendation:

That the Regional Municipality of Waterloo forward Report PDL-CPL-19-31, dated August 13, 2019 to the Ministry of Municipal Affairs and Housing as the Region's response to the Province's proposed regulatory changes relating to Schedule 9 (Local Planning Appeal Tribunal Act) and to Schedule 12 (Planning Act) of Bill 108, the More Homes, More Choice Act, 2019.

Summary:

On June 6, 2019, Bill 108, the More Homes, More Choice Act, 2019 received Royal Assent by the Provincial legislature. The Act makes significant changes to the planning appeals process and to development charges. It also makes changes to the conservation authorities, endangered species legislation and the Ontario Heritage Act.

Regional Council submitted its comments on Bill 108 to the Province through reports PDL-CPL-19-24-/PDL-LEG-19-37 dated May 28, 2019, and COR-FSD-19-25 dated May 28, 2019. In general, Regional Council indicated that it did not support the proposed amendments to the Planning Act and the Development Charges Act, and that the proposed changes would not meet the Province's objective of increasing the supply of affordable housing in Ontario.

Although Bill 108 has received Royal Assent, the Schedules to the bill (which contain the legislative changes) will not come into force until a day to be named by proclamation of the Lieutenant Governor of Ontario. Although the Province has not provided a firm date for proclamation, it is anticipated to occur this fall.

In anticipation of the proclamation of Bill 108, the Province has released a summary of its proposed regulations to implement certain parts of the bill for public input. This report provides staff's comments and recommendations with respect to three regulations of Regional interest:

1. Proposed transition regulations for development applications currently in progress;
2. Proposed transition regulations for major land use planning appeals before the Local Planning Appeal Tribunal (LPAT); and
3. Proposed new regulations regarding additional units in existing houses;

Staff's comments regarding the Province's proposed regulations under the Development Charges Act are outlined separately in Report No. COR-FSD-19___ dated August 13, 2019.

To meet the Province's August 6, 2019 commenting deadline, a copy of this report has been submitted to the Province as a placeholder pending Council's consideration of this report. Legal Services and the area municipalities have been consulted in the preparation of this report. Although staff have no objection in principle to the proposed regulations described below, we recommend that the Province clarify its proposed transition rules regarding matters currently under appeal before the LPAT.

Report:

On June 6, 2019, Bill 108, the More Homes, More Choice Act, 2019, received Royal Assent by the Provincial legislature. The Act makes major changes to 13 different Provincial statutes, including the Planning Act, the Development Charges Act, the Ontario Heritage Act and the Local Planning Tribunal Act. Highlights of the proposed changes include: reducing timelines for making planning decisions; changing how growth-related costs are funded through the Development Charges Act; and bringing back a land use planning appeal system similar to the former Ontario Municipal Board.

Regional Council submitted its comments on Bill 108 to the Province through two reports: PDL-CPL-19-24-/PDL-LEG-19/37 dated May 28, 2019; and COR-FSD-19-25 dated May 20, 2019. In general, Council indicated that it did not support the proposed changes to the Planning Act and the Development Charges Act, and that the proposed legislative amendments would meet not the Province's objective of increasing the supply of affordable housing in Ontario.

On June 21, 2019, the Province released a summary of its proposed regulatory changes to implement certain portions of Bill 108. Below are staff's comments and

recommendations with respect to three regulations of Regional interest.

1) Proposed transition regulations under the Planning Act

The Province is proposing changes to O. Reg. 174/16 to set out the following transition rules for planning matters in-process at the time certain parts of Schedule 12 to Bill 108 are proclaimed into force:

Planning Act Change	Applies to:
Expanding the grounds of appeal of a decision on an official plan/amendment or zoning by-law/amendment, and allowing the LPAT to make any decision the municipality could have made.	Appeals of planning decisions not yet scheduled for a hearing on the merits of the appeal by the LPAT.
Expanding the grounds of appeal of a lack of decision on an official plan/amendment or zoning by-law/amendment, and allowing the LPAT to make any decision the municipality could have made.	Appeals of the failure of a municipality to make a decision within the legislated timeline that have not yet been scheduled for a hearing on the merits of the appeal by the LPAT.
The removal of appeals other than by key participants (e.g., the Province, municipality, applicant, utility companies, etc.) and the reduction of approval authority decision timelines for non-decision of official plan amendments.	Applications where the municipality or approval authority has not issued a notice of decision at the time the proposed changes are proclaimed into force.
The removal of appeals other than by key participants for draft plan of subdivision approvals or changes to conditions of approval.	Applications where the notice of the decision of draft approval or changes to conditions of approval are appealed, on or after the date that the proposed changes are proclaimed into force.
The reduction for decision timelines on applications for official plan amendments (120 days), zoning by-law amendments (90 days, except where concurrent with official plan amendment for same proposal) and plans of subdivision (120 days).	Complete applications submitted after June 6, 2019.

Staff Comments

In general, staff believe the above transition rules are reasonable and will provide an appropriate period for municipalities and the development industry to adjust to the new planning rules.

However, staff does have concerns with the proposed regulation that would expand the grounds for appeal of an official plan/amendment or zoning by-law/amendment decision, or failure to make a decision, where such decision or failure to make a decision has been appealed but no hearing date on the merits of the appeal has been scheduled.

In some cases, appeals already before the LPAT (i.e., on the limited pre-Bill 108 grounds of a failure to be consistent with Provincial policy, or failure to conform with the Growth Plan or an upper-tier official plan), may be at the stage where all parties have filed their appeal and responding records and case synopses and had one or more case management conferences in preparation for a hearing, but no actual hearing date has been set. Allowing appellants to expand the grounds of their appeal at this late stage could result in significant delays by requiring parties to update issues lists, retain additional expert witnesses, and file additional evidence related to the new grounds. This could potentially result in lengthening the hearing time required to resolve the matter. Based on the Tribunal's current calendar, long hearings are scheduled well into the future because of the challenges of scheduling consecutive hearing dates.

Staff recommend that a transition to the expanded grounds of appeal should occur for appeals filed after the Bill 108 amendments are proclaimed in force, and a where a case management conference has not yet been scheduled.

2) Proposed transition regulations under the Local Planning Appeal Tribunal Act

The Province is proposing a new regulation to establish the transition rules for major land use planning appeals currently before the LPAT. Under the proposed rules, the amended LPAT Act would apply to:

- a major land use planning appeal that was commenced and continued under the former Ontario Municipal Board Act, except for the requirement to hold a case management conference;
- a major land use planning appeal that was commenced under the Ontario Municipal Board Act and continued under the existing LPAT Act, or a major land use planning appeal that was commenced under the existing LPAT Act, except where a hearing

on the merits of the appeal has been scheduled before the amendments come into force. If a hearing on the merits of the appeal has been scheduled before that day, the existing LPAT Act will continue to apply to the appeal;

- a major land use planning appeal commenced on or after the day the amendments of the LPAT come into force.

Staff Comments

The Province has not defined what a “major land use planning appeal” pertains to specifically. Staff anticipate this will relate to appeals of official plans, zoning-by-laws and plans of subdivision that previously saw the appeal process significantly modified by Bill 139.

The existing “Planning Act Appeals” regulation under the LPAT Act that prescribes timelines, time limits and practices and procedures for Planning Act appeals to the Tribunal is proposed to be revoked. It is not clear whether the Province will provide new timelines applicable to Planning Act Appeals through a new regulation.

3) Proposed regulations related to additional units in existing houses

The Planning Act currently requires the Region’s area municipalities to authorize in their official plans and zoning by-laws the use of second residential units in either a detached, semi-detached, and row house, or in an ancillary buildings and structures (e.g., above laneway garages or coach houses). Schedule 12 to Bill 108 amends the Planning Act to permit two units in the primary dwelling, and one unit in an ancillary building or structure. This would allow up to three units on a property instead of two.

To help remove barriers to the establishment of additional residential units, the Province is proposing a new regulation under the Planning Act setting out requirements and standards with respect to parking and occupancy. The new regulation would also clarify that an additional residential unit will be permitted irrespective of the date of the construction of the primary or ancillary building.

Staff Comments

Staff generally support the intent of this regulation to make it easier for homeowners to create residential units above garages, in basements and in laneways. Most second units are created in established neighbourhoods that are near schools, shopping centres, recreational facilities and other important amenities. They also help provide affordable housing options for those looking to live in lower density areas and, in many cases can be more affordable than apartment rentals.

Despite our broad support for this regulatory change, there are some ongoing challenges to creating additional units on existing properties, such as:

- municipalities with large post-secondary student populations (e.g., City of Waterloo) have circumstances where additional units may not be appropriate based on good land use planning principles;
- the high cost of retrofitting a home or ancillary building to add additional units, including the need to ensure fire and building code compliance; and
- parking-related challenges.

Corporate Strategic Plan:

The comments and recommendations in this report generally support the following Regional Strategic Objectives:

- 1.1 Support existing businesses and attract new employers and investments to stay, grow, thrive and prosper; and
- 5.1 Enhance opportunities for public engagement, input and involvement in Regional decision making.

Financial Implications:

Nil.

Other Department Consultations/Concurrence:

Legal Services have been consulted in the preparation of this report.

Area Municipal Consultation/Coordination:

Staff circulated a preliminary draft of this report to the area municipalities for review. Any feedback received from them has been incorporated into this report.

Prepared By: John Lubczynski, Principal Planner

Approved By: Rod Regier, Commissioner, Planning, Development and Legislative Services