REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: AUGUST 6, 2019

FROM:	Legal Services Department, Financial Planning Department, and Planning Services Department
DATE:	July 26, 2019
SUBJECT:	**Bill 108, More Homes, More Choice Act – Proposed Regulations**
LOCATION:	Town wide
WARD:	Town wide

RECOMMENDATION:

1. That the report titled "Bill 108, *More Homes, More Choice Act* – Proposed Regulations," dated July 26, 2019, be endorsed and submitted to the Province, along with the Council resolution, as the Town of Oakville's comments on the proposed regulations that have been provided to date.

2. That the Province be requested to consult with municipalities prior to issuing final regulations associated with Bill 108, and provide responses to the questions submitted by the Town of Oakville attached as Appendix A.

3. That the comments within the report titled "Bill 108, *More Homes, More Choice Act* – Proposed Regulations," dated July 26, 2019, related to the proposed regulations under the *Local Planning Appeal Tribunal Act, 2017*, be endorsed as the Town of Oakville's response to Proposal No. 19-MAG007.

4. That the comments within the report titled "Bill 108, *More Homes, More Choice Act* – Proposed Regulations," dated July 26, 2019, related to the proposed new regulation and regulation changes under the *Planning Act*, be endorsed as the Town of Oakville's response to ERO No. 019-0181.

5. That the comments within the report titled "Bill 108, *More Homes, More Choice Act* – Proposed Regulations," dated July 26, 2019, related to the proposed regulation changes under the *Development Charges Act*, be endorsed as the Town of Oakville's response to ERO No. 019-0184, and submitted to the Ministry of Municipal Affairs and Housing prior to the August 21, 2019 commenting deadline.

6. That the comments within the report titled “Bill 108, *More Homes, More Choice Act* – Proposed Regulations,” dated July 26, 2019, related to the proposed community benefits authority under the *Planning Act*, be endorsed as the Town of Oakville’s response to ERO No. 019-0183, and submitted to the Ministry of Municipal Affairs and Housing prior to the August 21, 2019 commenting deadline.

7. That the Town Clerk forward a link to the report titled “Bill 108, *More Homes, More Choice Act* – Proposed Regulations,” dated July 26, 2019, along with the Council resolution, to Halton’s Members of Provincial Parliament (MPPs), Halton Region, the City of Burlington, the Town of Halton Hills, the Town of Milton, and the Association of Municipalities of Ontario (AMO) for information.

8. That staff be authorized to make submissions to the Province in response to any other proposals related to Bill 108, *More Homes, More Choice Act, 2019*, should the Province’s commenting deadline preclude a prior report to Council.

KEY FACTS:

The following are key points for consideration with respect to this report:

- On May 2, 2019, the Province introduced Bill 108 – *More Homes, More Choice Act, 2019*.

- Bill 108 received Royal Assent on June 6, 2019 with only minor amendments to the proposed legislation.

- On June 21, 2019, the Ministry of Municipal Affairs and Housing posted descriptions of three proposed regulations related to Bill 108 on the Environmental Registry of Ontario (ERO) for public review with commenting deadlines of August 6 and August 21, 2019.

- On June 21, 2019, the Ministry of the Attorney General posted a description of a proposed regulation under the *Local Planning Appeal Tribunal Act, 2017* related to Bill 108 on Ontario’s Regulatory Registry (ORR) for public review with a commenting deadline of August 5, 2019.

- These draft regulations provide the first details and opportunity to comment on how the province proposes to implement Bill 108. It is not yet known when the remaining draft regulations will be made available, the extent of consultation to be undertaken, or a timeline for enactment. The full impact of Bill 108 on the town cannot be assessed until those details are known.

BACKGROUND:

On May 2, 2019, the Ministry of Municipal Affairs and Housing released the "More Homes, More Choice: Ontario's Housing Supply Action Plan". As part of the Action Plan, the Province also tabled Bill 108 – *More Homes, More Choice Act, 2019*.

At its meeting on May 27, 2019, Council endorsed a staff report as the town's submissions in response to Bill 108. On June 6, 2019, Bill 108 received Royal Assent and was largely unchanged from the First Reading version of the Bill.

On June 18, 2019 the Minister of Municipal Affairs and Housing convened a teleconference with Heads of Council. A list of questions was submitted by the town in advance, as set out in Appendix A. These questions have largely remained unaddressed, and staff recommend that Council request that the Province provide responses.

On June 21, 2019, the Ministry of Municipal Affairs and Housing posted descriptions of three regulations related to Bill 108:

- ERO No. 019-0181: Proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the More Homes, More Choice Act, 2019
- ERO No. 019-0183: Proposed new regulation pertaining to the community benefits authority under the Planning Act
- ERO No. 019-0184: Proposed changes to O. Reg. 82/98 under the Development Charges Act related to Schedule 3 of Bill 108 - More Homes, More Choice Act, 2019

The public consultation period for ERO No. 019-0181 ends on August 6, 2019. In order to meet the commenting deadline, staff will provide a submission to the Ministry of Municipal Affairs and Housing consistent with the comments in this report. Ministry staff indicated that comments submitted shortly after the deadline would still be considered should Council have any additional comments that they would like incorporated when the Council resolution is submitted. For ERO Nos. 019-0183 and 019-0184 comments are due by August 21, 2019.

Also on June 21, 2019, the Ministry of the Attorney General posted a description of proposed regulations under the *Local Planning Appeal Tribunal Act* (LPAT Act) related to Bill 108:

- ORR Proposal No. 19-MAG007: Proposed Regulations under the Local Planning Appeal Tribunal Act, 2017

The public consultation period for the proposed LPAT Act regulations ends on August 5, 2019. In order to meet the commenting deadline, staff will provide a submission to the Ministry of the Attorney General consistent with the comments in this report. Should Council have any additional comments they can be incorporated when the Council resolution is submitted.

COMMENTS:

As noted in this and previous reports to Council, Bill 108 will significantly impact Council's ability to manage and finance the growth-related needs of the town and provide complete communities.

The Province has indicated that further information – missing from the proposed regulations released to date – will be provided over the next several months, including input from a technical working group that should be struck by the fall. This has created an environment of uncertainty for municipalities, which makes it exceptionally difficult to plan for and manage the changes required by Bill 108. As it is unknown when the Province might provide further information and consultation opportunities, staff are requesting the authority to make submissions in response to any other proposals related to Bill 108, *More Homes, More Choice Act, 201*9, should the Province's commenting deadline preclude a prior report to Council.

This report provides Council with information and comments on the proposed regulations provided thus far related to Bill 108, and recommends that submissions be made as discussed herein.

ERO No.: 019-0181
Proposed new regulation and regulation changes under the *Planning Act*, including transition matters, related to Schedule 12 of the Bill 108 – the *More Homes, More Choice Act, 2019*

Posted by: Ministry of Municipal Affairs and Housing
Consultation closes: August 6, 2019 at 11:59 p.m.

Transition Matters

The Minister is proposing that the following *Planning Act* changes be transitioned as described below when Schedule 12 of Bill 108 comes into force (unknown):

- *De novo* hearings based on the expanded grounds of appeal (i.e., the "best planning outcome" as determined by the LPAT) would be held for:

  - appeals of decisions on official plans/amendments or zoning by-laws/amendments that have not yet been scheduled for a hearing;
  - appeals of non-decisions on official plans/amendments or zoning by-law amendments that have not yet been scheduled for a hearing.

- Removal of appeals other than by key participants (e.g., Province, municipality, applicant) would apply where the approval authority has not issued a notice of decision at the time the proposed changes come into force.

- For draft plan of subdivision approvals, conditions of draft plan of subdivision approvals or changes to those conditions, appeals other than those by key participants (e.g., Province, municipality, applicant, utility companies, etc.) would be removed where:
  - notice of the decision to draft approve or change conditions has been given; or, conditions are appealed other than at the time of draft approval, on or after the day that Schedule 12 of Bill 108 comes into force (e.g., appeals made during appeal periods that begin once the proposed changes come into force).

- As of Royal Assent (June 6, 2019), reduced decision timelines for planning applications would apply:
  - 120 days for an official plan amendment;
  - 90 days for a zoning by-law amendment (except where concurrent with an official plan amendment); and,
  - 120 days for a plan of subdivision.

As discussed further below regarding ORR Proposal No. 19-MAG007, if the goal is “speed” in the planning process, appeals filed under the existing LPAT Act and currently awaiting hearings, should be completed in accordance with the Bill 139 rules regardless of whether a hearing has been scheduled. Alternatively, the Province should provide exemptions for certain appeals where significant municipal resources have already been invested in preparing for hearings under the Bill 139 rules, including the town’s: Official Plan Amendment Number 15 (OPA 15), Urban Structure; Official Plan Amendment Number 16 (OPA 16), Cultural Heritage Policy Updates; and, Official Plan Amendment Number 24 (OPA 24), Cultural Heritage Special Policy Areas, including Glen Abbey Golf Course, and Zoning By-law 2018-016.

The proposed decision timelines are unrealistic and will impact the ability of staff to consult effectively with the public or make recommendations in support of "good planning." The reduced timelines could lead to more appeals for non-decisions and consequently more appeals at the LPAT awaiting a hearing, which is not an efficient use of public resources and will certainly not promote an increase in timely approvals of new housing. Applying the new decision timelines retroactively to Royal Assent (June 6, 2019) does not allow municipalities any opportunity to assess whether additional staff resources or updates to internal procedures and technology may be required, let alone implemented. The reduced decision timelines should only apply to complete applications that are submitted after the Bill 108 *Planning Act* provisions come into force.

As the Town previously submitted, the Province should impose a new pre-consultation process that would allow municipalities the opportunity to identify issues early in the process to be addressed and potentially resolved before an application is formally submitted. Additionally, the Province should allow municipalities to deem an application incomplete for qualitative reasons (e.g., a required supporting study did not provide sufficient technical analysis in accordance with established submission criteria).

Community Planning Permit System

A community planning permit system (CPPS) replaces municipal zoning, site plan and minor variance processes for a prescribed area with a single permit application and approval process. The governing regulation sets out what must be included in the official plan, rules relating to establishing the implementing by-law and what can and cannot be included in the by-law. Under Bill 108, the Province may now issue an order to require a local municipality to establish a CPPS in specified locations (e.g., major transit node), within an unknown prescribed timeline.

The Minister is now proposing changes to the community planning permit regulation that would remove the ability to appeal the official plan policies required for the establishment of a CPPS as well as the implementing by-law. As a result, all public and stakeholder consultation on the appropriate planning for these areas must occur prior to the implementation of a CPPS. This change is intended to streamline development approvals in areas where the Minister requires a CPPS to be established. However, the proposed regulation notes that a CPPS will be exempt from the newly enacted Community Benefits Charge (CBC) discussed in more detail later in this report. It is unclear what conditions could be imposed by a municipality in these areas. It is also unknown whether or where the Minister will require a CPPS in Oakville and if so, the impact to municipal revenues.

As residents would not have the ability to oppose applications for community planning permits in their neighbourhoods, the regulation should contain specific criteria on the area types that would be considered for a CPPS and sufficient time for the municipality to comply with the requirements of a Minister's order to establish a CPPS. Therefore the Province is requested to consult with municipalities on changes to O. Reg. 173/16 Community Planning Permits taking these concerns into account.

Additional Residential Unit Requirements and Standards

Once in force, Schedule 12 of Bill 108 will require municipalities to authorize in their official plans and zoning by-laws the use of an additional residential unit in both a primary dwelling (i.e., detached, semi-detached and row houses) *and* in an ancillary building or structure (e.g., above laneway garages or coach houses). Municipalities were already required to authorize "second units" either in a primary dwelling (i.e., the same dwelling types as above) *or* an ancillary building or structure. The effect of Bill 108 will be to allow up to three units on most residential properties instead of two, but subject to new requirements and standards.

A regulation is proposed under s. 35.1(2)(b) of the *Planning Act* to set out the following requirements and standards for additional residential units:

- one parking space for each of the additional residential units, which may be provided in tandem, unless a municipal zoning bylaw requires no parking spaces or sets a parking standard lower than a standard of one parking space per unit; and,

- occupancy of an additional residential unit (where permitted in the zoning by-law) by any person, regardless of whether the primary unit is occupied by the owner of the property.

Further, an additional residential unit, where permitted in the zoning by-law, would be permitted without regard to the date of construction of the primary dwelling.

The proposed requirements and standards are appropriate. It is noted that there is no requirement or standard proposed with respect to the size of an additional residential unit. Presumably, this would be left to municipalities to determine.

The introduction of additional residential units in existing neighbourhoods will provide gentle increases in density in-line with the provincial mandate to provide more housing options. With this, however, there will be increased demand on existing and planned community services (e.g., schools, parks and community

centres) and infrastructure (e.g., water and wastewater systems, transit and roads, including on-street parking), which will have to be monitored.

There may also be capacity, health and safety impacts if municipalities are required to authorize additional residential units in all dwellings and associated ancillary buildings and structures on properties serviced by private on-site sewage and water systems (e.g., within Greenbelt or Parkway Belt West Plan areas). In such cases, the proposed new regulation should indicate that additional residential units can only be established if it can be first be demonstrated, in accordance with provincial and municipal standards and guidelines, that the additional residential units will not have adverse impacts on human health and the environment.

Housekeeping and Regulatory Changes

Bill 108 provides for the removal of provisions in the *Planning Act* for second notice of subdivision applications and provisions for some non-decision appeals for official plans/amendments. As a result, the Province is proposing housekeeping changes to existing regulations to remove the redundant notice of a subdivision application and the notice requirements for non-decision appeals. As Bill 108 provides for section 37 (bonusing) to be replaced by a community benefits charge, the Province is proposing housekeeping changes to amend the existing regulation regarding inclusionary zoning to remove the restrictions and prohibitions in respect of the municipal authority under section 37 with inclusionary zoning.

These housekeeping changes arise from the provisions of Bill 108 and therefore no further comment is necessary.

ERO No.: 019-0183
Proposed new regulation pertaining to the community benefits authority under the *Planning Act*

Posted by: Ministry of Municipal Affairs and Housing
Consultation closes: August 21, 2019 at 11:59 p.m.

Transition Matters

The Province has indicated that Bill 108 provides transitional provisions for section 37, and section 42 under the *Planning Act*, and development charges (DCs) for discounted services (soft services) under the *Development Charges Act*, to provide the flexibility necessary for municipalities to migrate to the community benefits charge (CBC) authority. It has committed to consult with

municipalities and indicated that changes to the financial tools will provide similar revenues for the funding of growth related community infrastructure.

At this time only some of the proposed regulations have been provided for comment within very tight timelines. Despite the absence of a regulation prescribing any requirements for a CBC strategy, which is required before passage of a CBC by-law, the Province has indicated that proclamation (coming into force) of the new CBC provisions will be January 1, 2020, and by January 1, 2021, it is proposed that municipalities must transition to the CBC if they wish to collect for the growth related capital costs of services now provided through DCs (unless the service is prescribed by regulation) and sections 37 and 42 of the *Planning Act*.

If the CBC provisions are proclaimed on January 1, 2020, it appears that municipalities would cease to have access to the alternative parkland rate. It is unclear how this is consistent with the Province's stated objective to ensure that municipal revenues historically collected from DCs for soft services, bonusing imposed through provisions of the *Planning Act* and parkland dedication including the alternative rate are maintained. The Province should clarify how necessary revenues for community infrastructure are expected to be maintained in these circumstances.

Pending any regulation or description of the required strategy to implement a CBC by-law, getting one in place within the proposed timelines (i.e., approximately one year) is unlikely to be achievable. Staff anticipate that the extent of study and documentation required to support the creation of a new CBC by-law would likely be comparable to that required for a new DC by-law, which typically takes two years or more to prepare. The regulation should permit the completion of DC studies, CBC strategy and if ordered a CPPS, to run parallel in order to develop a comprehensive strategy and complete necessary studies and plans. A comprehensive approach is required to address the multitude of changes to the legislative framework in order to ensure municipal revenue can be maintained for growth related infrastructure.

Reporting on Community Benefits and Parkland

The reporting requirements being proposed in the regulation are essentially the same requirements for existing reporting requirements of the *Planning Act* and *Development Charges Act* and therefore no further comment is necessary.

Exemptions from Community Benefits

The Minister is proposing that the following types of developments "that are in high demand" as stated by the Province, be exempt from the CBC:

- Long-term care homes
- Retirement homes
- Universities and colleges
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion
- Hospices
- Non-profit housing

Publicly funded universities, community colleges or colleges of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, have historically been exempt from the payment of DCs. However, the remaining types of development represent a growing proportion of new development in Oakville. If the intention is to exempt developments in high demand as stated by the Province, it is unclear how the commitment that revenues will be maintained under the new regime, as well as ensure that growth pays for growth to the maximum extent possible can be maintained. In addition, Bill 108 as proposed does not provide for discretionary exemptions that would incent certain types of development in accordance with that municipality's development strategy. There is also a need for rules to be incorporated in the regulation to require the development to demonstrate how it meets the exemption through legislation, licensing or association membership.

Appraisals

For any development, the CBC payable shall not exceed an amount determined by a formula involving the application of a prescribed percentage to the value of the development land on the day before the building permit is issued. Where a developer is of the opinion that the CBC applied to their development exceeds what is legislatively permitted, Bill 108 allows developers to provide the municipality with an appraisal of their site. It is silent, however, on the qualifications of the appraiser. The regulation should set out that the appraisal be prepared by an appraiser with an AACI designation, experience in the type of property class and the specific municipal market. The owner may pay the charge under protest and, within 30 days, provide the municipality with an appraisal of the value of land. If the municipality disputes the owner's appraisal, it has 45 days to provide the owner with its own appraisal of the value of the land. If the municipality's appraisal differs by more than 5 percent from the owner's appraisal, the owner can select an appraiser from the municipal list of appraisers, and that appraisal must be provided within 60 days. While the proposal does not specify it is assumed that the 3rd appraisal would be the final determination of the value that must be accepted.

Obtaining up to three appraisals for every development that disputes the CBC will hamper the town's ability to manage development in an efficient manner and

put added pressure on administrative requirements. It is also unclear from the legislation and draft regulations who would be responsible for the cost of obtaining these appraisals. Municipalities should be permitted to charge the cost of these appraisals to developers. Additionally, developers would have an incentive to dispute a municipality's valuation in every instance as it appears that the only relief contemplated is a refund to the developer. The regulation should be clarified to permit/require an additional CBC payment if it is subsequently determined that the appraisal of the value of the land is actually higher than the basis of the original CBC payment.

Excluded Services

The Minister is proposing to prescribe that the following facilities, services or matters be excluded from community benefits (i.e., CBC payments could not be used to finance these items):

- Cultural or entertainment facilities
- Tourism facilities
- Hospitals
- Landfill sites and services
- Facilities for the thermal treatment of waste
- Headquarters for the general administration of municipalities and local boards

These exclusions align with the ineligible services currently in the *Development Charges Act* and therefore no further comment is necessary.

Community Planning Permit System Exempt from CBC

The Province has also indicated that, because the community planning permit system allows conditions requiring the provision of specified community facilities or services, a CBC by-law would not be available for use in areas within a municipality where a community planning permit system is in effect. However, it is unclear what alternate conditions could be imposed by a municipality in these areas, which would still generate the need for "soft services" and parkland. As noted in other sections of this report, should the Province order the town to implement a community planning permit system the net financial impact would need to be assessed to ensure that services funded from CBC's are not impacted by virtue of a newly created area being added to the list of CBC exemptions. It would be recommended that Provincial orders of this nature should be in consultation with the municipality and consistent with the timing of new DC Studies and CBC strategies when the by-laws expire.

CBC Formula

The CBC payable will not be permitted to exceed an amount determined by a formula involving the application of a yet-to-be prescribed (unknown) percentage of the value of the development land. The Province proposes that a range of percentages will be prescribed to take into account varying values of land and has stated there are two goals:

1. to ensure that municipal revenues historically collected from development charges for “soft services”, parkland dedication including the alternative rate, and density bonusing are maintained; and,

2. to make the costs of development more predictable.

It remains unclear how the methodology of capping the CBC by a percentage of land value can adequately recognize the differences in land values and service financing needs within cities/towns and throughout the Province so that existing revenues are maintained and complete communities are delivered in response to growth needs.

As noted earlier, the Ministry has indicated it will consult with municipalities on developing a CBC formula that will ensure revenues will be maintained under the new regime. To this end, the Province has advised that a technical working group will be struck to develop a CBC formula for the cap and a consultant is being engaged to assist with that work. Significant consultation regarding the CBC formula is required, which further illustrates how difficult the implementation of a CBC by-law will be within the proposed timeframes. There are a number of questions raised by the proposed imposition of a maximum percentage cap based on land value, including but not limited to:

- How will substantial differences in land value across the Province as well as within a municipality be accounted for?
- How/when is the CBC formula, once derived, to be updated for significant fluctuations in market value (e.g., annually based on real estate board values)?
- Will municipalities have the ability to develop an average land value attributable to the entire municipality or specific geographic areas (i.e., area-specific CBCs within the by-law)?
- How will different types of development that require different services (e.g., residential services versus non-residential) be addressed?
- How will land value that is contingent on market conditions and site quality be accounted for? Will the determination of the CBC be prior to the first

"above-grade" building permit to ensure that the site is remediated and ready for development?

- How will the requirement for one CBC by-law per municipality work in a two-tier system? Will a region-wide allocation protocol based on CBC services provided by each level of government be required?

As a result of all of these complex variables, staff do not expect that there is any methodology based on a maximum percentage of land value that will ensure the historical municipal revenue from density bonusing, parkland dedication, and DCs for discounted service can be maintained under the new CBC charge.

ERO No.: 019-0184
Proposed changes to O. Reg. 82/98 under the *Development Charges Act* related to Schedule 3 of Bill 108 – *More Homes, More Choice Act, 2019*

Posted by: Ministry of Municipal Affairs and Housing
Consultation closes: August 21, 2019 at 11:59 p.m.

Transition Matters

In addition to transitional provisions being proposed for section 37 and section 42 of the *Planning Act*, discounted (soft) services under the *Development Charges Act* are indicated to be transitioned to the newly enacted Community Benefits Charge when the legislative provisions come into force. The regulation proposes that a CBC could come into force on January 1, 2020. The specified date by which municipalities must transition to community benefits is then proposed to be January 1, 2021. After this date, DC's for soft services cannot be collected unless prescribed under regulation.

In addition, the regulatory proposal does not provide any insight on whether negative balances in DC soft service reserve funds or debt issued in advance of DC collections may be rolled into the CBC charge. This information is vital to assessing the financial impact to the town. It is recommended that any negative balances be carried forward into the CBC calculation.

As discussed above under ERO No. 019-0813, implementing a transition strategy from collecting soft DC services to a new CBC, which is to be capped at a yet-to-be prescribed percentage of land value, is unlikely to be achievable, particularly in the absence of any regulation regarding requirements for the CBC strategy. The development of masterplans and other studies to support the legislative requirements of developing and implementing a DC by-law typically takes a minimum of two years. A similar process will be required to implement a

CBC by-law. Therefore, the prescribed date for transition should coincide with the expiry of an existing DC by-law.

Development Charges Deferral

Bill 108, as enacted incorporates the provision that rental housing, institutional, industrial, and commercial development, and non-profit housing be eligible for deferral of the payment of DC's until occupancy rather than building permit issuance. The Minister is now proposing the following definitions for the types of developments proposed to be eligible for development charge deferrals:

- "Rental housing development" means construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes with four or more self-contained units that are intended for use as rented residential premises.

- "Non-profit housing development" means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for residential purposes by a non-profit corporation.

- "Institutional development" means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

    - long-term care homes;
    - retirement homes;
    - universities and colleges;
    - memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and
    - hospices

- "Industrial development" means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

    - manufacturing, producing or processing anything,
    - research or development in connection with manufacturing, producing or processing anything,
    - storage, by a manufacturer, producer or processor, of anything used or produced in such manufacturing, production or processing if the storage is at the site where the manufacturing, production or processing takes place, or

  - retail sales by a manufacturer, producer or processor of anything produced in manufacturing, production or processing, if the retail sales are at the site where the manufacturing, production or processing takes place.

- "Commercial development" means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure for:

  - office buildings as defined under subsection 12(3) in *Ontario Regulation 282/98* under the *Assessment Act*; and
  - shopping centres as defined under subsection 11(3) in *Ontario Regulation 282/98* under the *Assessment Act*.

The definitions as proposed do not provide certainty that the types of structures to be eligible for DC deferral will retain that status over the life of the deferral period or even provide the anticipated services of such development types. Further criteria should be reflected in the definitions to ensure that the "spirit" of the legislation is maintained of providing more affordable housing (e.g., that rental structures cannot be converted to condominium developments for 25 years or specific licensing or legislative requirements be met).

In addition, the regulations proposed at this time are silent on methodologies that would assure that the town can recoup the added administrative costs of tracking and collection of deferred payments as well as the provision of tools to protect against collection losses should ownership change or the owner default.

It is noteworthy that Section 27 is retained in the *Development Charges Act* (DC Act) and permits a municipality to enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid before or after it would otherwise be payable. The town currently requires through the DC By-law that this tool be utilized for certain types of below grade building permits. The owner is required to enter into a Section 27 agreement deferring DCs payable to the first above grade permit issuance payable at the rates in effect at that time.

Development Charge Freeze

Bill 108 provides that the amount of a DC would be set at the time council receives the site plan application for a development; or if a site plan is not submitted, at the time council receives the application for a zoning amendment (the status quo would apply for developments requiring neither of these applications). The Province is now proposing a change to the regulation to establish the period in which the development charge rate freeze will be in place,

namely, the DC is proposed to be frozen until two years from the date that a site plan application is approved, or in the absence of a site plan application, two years from the date that a zoning application was approved.

An approved site plan or zoning amendment provides better certainty that the development will proceed to building permit issuance. However, significant time could lapse between the date the DC rate is frozen (application date) and the application approval date. This still represents a significant impact to administrative costs and processes to enable tracking of individual agreements by approval date, assessing interest and implementing collection measures should building permit issuance not occur in the proposed time frame or there is a default. The length of the DC rate freeze should be restricted to 6 months to a maximum of one year from the application date to provide certainty of revenue collection.

Interest Rate During Deferral and Freeze of DCs

The Minister is not proposing to prescribe a maximum interest rate that may be charged on DC amounts that are deferred or on DCs that are frozen. This will provide municipalities with flexibility in determining the interest rate. An appropriate rate will be determined as further information comes forward from the Ministry to enable staff to determine the financial impact of payment deferrals or freezing of rates. However, the chosen rate should be reasonable, comply with applicable legislation and defensible.

Additional Dwelling Units

The DC Act previously addressed the creation of up to two additional dwelling units in a single detached dwelling, and one additional dwelling unit in a semi-detached dwelling, row dwelling or other residential building where the gross floor area of the additional dwelling unit or units was less than or equal to the gross floor of the existing dwelling unit. In an effort to encourage the development of additional units in existing structures, the Minister is proposing an amendment to the regulation to permit “additional residential units” in ancillary buildings and structures to these existing dwellings as well without triggering a DC (subject to same rules and restrictions).

It is proposed that one additional dwelling unit in a new single detached dwelling, semi-detached dwelling, or row dwelling, including in a structure ancillary to one of these dwellings, would be exempt from DCs. It is further proposed that within other existing residential buildings, the creation of additional units comprising 1% of existing units would be exempt from DCs. It should be clarified whether this is intended to mean up to 1% of the existing number of units or of the total floor area.

The creation of additional housing types is seen as a positive move to increase the supply of low cost housing, however the impact of additional units on the existing neighbourhood should be monitored as noted earlier in the report. Clarity should be provided by defining what constitutes an ancillary building or structure where additional units are permitted as the Province has only provided the examples of "above laneway garages or coach houses." More information is required to be able to evaluate the impact on revenues received through DCs and CBCs to fund growth-related communities.

ORR Proposal No.: 19-MAG007
Proposed Regulations under the *Local Planning Appeal Tribunal Act, 2017*

Posted by: Ministry of the Attorney General, Policy Division
Consultation closes: August 5, 2019

Transition

The Ministry of the Attorney General is proposing to make a regulation under the amended *Local Planning Appeal Tribunal Act* (LPAT Act) that would establish the following transition rules:

- Bill 108 will apply to appeals commenced and continued under the former *Ontario Municipal Board Act*, except for the requirement to hold a case management conference.
- Bill 108 will apply to appeals commenced under the former *Ontario Municipal Board Act* and continued under the existing 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.
- Bill 108 will apply to appeals 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.

Appeals filed under the existing LPAT Act, and currently awaiting hearings, should be completed in accordance with the Bill 139 rules. Alternatively, the Province should provide exemptions for certain appeals where significant municipal resources have been invested in preparing for hearings under the Bill 139 rules, including the town's:

- Official Plan Amendment Number 15 (OPA 15), Urban Structure;
- Official Plan Amendment Number 16 (OPA 16), Cultural Heritage Policy Updates); and,
- Official Plan Amendment Number 24 (OPA 24), Cultural Heritage Special Policy Areas, including Glen Abbey Golf Course, and Zoning By-law 2018-016.

Removal of Restrictions and Timelines

Bill 108 removes the provisions established under Bill 139 that restricted oral testimony and submissions at hearings of major land use planning appeals (e.g., appeals of official plans, zoning by-laws) before the Local Planning Appeal Tribunal (LPAT). These changes arise from the provisions of Bill 108 reverting to *de novo* hearings and therefore no further comment is necessary.

The Ministry is further proposing to revoke the existing regulation that prescribes timelines for the disposition of *Planning Act* proceedings before the LPAT, establishes time limits for submissions at oral hearings of major land use planning appeals before the LPAT, and limits the examination or cross-examination of parties and witnesses, other than by the Tribunal. The rationale for the revocation is that it is “no longer relevant given the recent amendments to the Act”. Removal of the timeline requirements for the LPAT to dispose of appeals operates as a disincentive for the timely resolution of land use disputes. The restricted standard of review established by Bill 139 required applicants to work with municipalities to resolve issues rather than simply appealing everything to the LPAT. If the goal is “speed” to allow more housing to be built, it remains unclear how reverting to lengthy *de novo* hearings would achieve this objective.

CONCLUSION:

Staff are recommending that this report be endorsed and submitted to the Province, along with the Council resolution, as the Town of Oakville’s comments on the proposed regulations related to Bill 108. The town’s submissions can be summarized as follows:

General

- The description of the proposed regulations does not contain sufficient information to provide comprehensive comments.

- The timeframe within which municipalities have to provide meaningful comment is too short, particularly given summer council meeting schedules.
- The proposed regulations should be released in draft prior to being finalized.
- It remains unclear how the legislative amendments arising from Bill 108 will facilitate the goal of achieving more affordable housing and ensure that growth will pay for growth.

ERO No. 019-0181

With respect to the proposed new regulation and regulation changes under the Planning Act, including transition matters, related to Schedule 12 of Bill 108 - the More Homes, More Choice Act, 2019:

- Appeals filed under the existing LPAT Act should be completed under the Bill 139 rules regardless of whether a hearing has been scheduled. Alternatively, there should be exemptions for certain appeals.
- Reduced decision timelines should only apply to complete applications that are submitted after the Bill 108 *Planning Act* provisions come into force.
- A new mandatory pre-consultation process should be imposed.
- Municipalities should be permitted to deem a development application incomplete for qualitative reasons (e.g., a required study did not provide sufficient technical analysis).
- Consultation and sufficient time is needed for municipalities prior to the imposition of a Minister’s order to implement a Community Planning Permit System.
- Additional units should only be permitted if it can be demonstrated that they will not have adverse impacts on human health and the environment.

ERO No. 019-0183

With respect to the proposed new regulation pertaining to the community benefits authority under the *Planning Act*:

- Alternative rate should not be repealed until a CBC by-law is passed.
- Requirements for the CBC strategy are needed together with more time to implement, which should run parallel with DC studies and the expiry of an existing DC by-law.

- Cap based on a maximum percentage of land value does not appear feasible if the goal is to ensure historical municipal revenue can be maintained.

- Cost of land value appraisals should be paid by developers.

- Additional CBC payment should be required if developer disputes and the appraisal of the value of the land is actually higher than the basis of the original CBC payment.

ERO No. 019-0184

With respect to the proposed changes to O. Reg. 82/98 under the *Development Charges Act* related to Schedule 3 of Bill 108 – *More Homes, More Choice Act, 2019*:

- Negative balances should be permitted to be carried forward into the CBC calculation.

- Prescribed date for transition to the CBC should coincide with the expiry of an existing DC by-law.

- Definitions do not provide certainty that the types of structures to be eligible for DC deferral will retain that status over the life of the deferral period.

- DC rate freeze should be restricted to 6 months to a maximum of one year from the application date.

ORR Proposal No. 19-MAG007

With respect to the proposed regulations under the *Local Planning Appeal Tribunal Act, 2017*:

- Appeals filed under the existing LPAT Act should be completed in accordance with the Bill 139 rules. Alternatively, the Province should provide exemptions for certain appeals.

- Removal of the timeline requirements for the LPAT to dispose of appeals operates as a disincentive for the timely resolution of land use disputes and if the goal is “speed” to allow more housing to be built, it remains unclear how reverting to lengthy *de novo* hearings would achieve this objective.

CONSIDERATIONS:

(A) PUBLIC

Members of the public may provide comments on the draft Bill 108 regulations discussed in this report through the related postings on the Environmental Registry of Ontario (ERO) website (https://ero.ontario.ca/) and Ontario's Regulatory Registry (ORR) website (https://www.ontariocanada.com/registry/).

(B) FINANCIAL

There are no financial implications arising from the recommendations in this report. However, Bill 108's proposed capped CBC, and removal of alternative parkland rate and density/height bonus provisions, among other things, will have undetermined financial impacts for the town. Follow-up reports about the anticipated impacts to the town's capital planning will be provided to Council when more information is available.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

This report was prepared by the Legal Services, Financial Planning and Planning Services departments in consultation with the senior management team and delegates. Follow-up reports about the anticipated impacts to the town will be provided to Council when more information is available.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do
- always act as a team

(E) COMMUNITY SUSTAINABILITY

Staff continue to be concerned about the impacts that Bill 108 may have on environmental sustainability (e.g., reduced minimum greenfield densities) and economic sustainability (e.g., undermining municipalities' ability to ensure that growth pays for growth to the maximum extent possible).

APPENDICES:

Appendix A Town of Oakville Questions for the Minister of Municipal Affairs and Housing Regarding Bill 108 (July 2019)

Prepared by:

Nadia Chandra
Assistant Town Solicitor

Paula Adamson, CPA, CMA
Manager, Development Financing and Investments

Lesley E. Gill Woods, MCIP, RPP
Senior Planner, Policy Planning and Heritage

Recommended by:

Douglas Carr
Town Solicitor

Nancy Sully, CPA, CMA
Acting Commissioner, Corporate Services and Treasurer

Mark H. Simeoni, MCIP, RPP
Director, Planning Services