**File: Bill 108**
**Planner: J. Lee/B. Morin**

# Report to Planning and Environment Committee

**To:** **Chair and Members**
**Planning & Environment Committee**
**From:** **John M. Fleming, MCIP, RPP**
**Managing Director, Planning and City Planner**
**Subject:** **Bill 108 – More Homes, More Choice Act, 2019**
**Meeting on:** **May 27, 2019**

## Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with respect to Bill 108 – More Homes, More Choice Act, 2019:

(a) This report, entitled “Bill 108 – More Homes, More Choices Act, 2019 Update Report" **BE RECEIVED** for information;

(b) This report **BE FORWARDED,** with a cover letter, to the Ministry of Municipal Affairs and Housing for consideration in response to the Environmental Registry of Ontario (ERO) posting of the proposed regulation, noting that the comment period is from May 2, 2019 to June 1, 2019; and

**IT BEING NOTED** that as of May 14, 2019, Bill 108 was in debate at Second Reading and **IT BEING FURTHER NOTED** that Staff will report back to Council with any further information on legislative changes arising from this Bill.

## Executive Summary

This report contains an overview of changes proposed through Bill 108, More Homes, More Choices Act, 2019. The proposed Bill would amend 13 other Acts, including the *Development Charges Act, 1997*, the *Endangered Species Act, 2007*, the *Local Planning Appeal Tribunal Act, 2017*, the *Ontario Heritage Act*, and the *Planning Act*.

Significant concerns with the proposed legislation include:

- Decreasing the timelines for the consideration of planning applications will limit the opportunity to consult with the public, contrary to recent efforts by the City to enhance opportunities for public consultation and engagement.
- Changes to the Development Charges Act would limit the municipal services eligible for funding through development charges and may significantly impact the City’s ability to recover growth-related costs.
- Removing bonus zoning as a tool for cities to acquire facilities, services and matters in favour of greater height and density allowances through Section 37 of the Planning Act and creating a new Section 37 that would allow the establishment of a community benefits charge to fund the provision of “soft services” such as libraries, affordable housing and parkland.
- Limitations on parkland dedication when a community benefits charge by-law is adopted will have an impact on the City’s ability to secure parkland with new development.
- Permitting, as-of-right, up to two secondary dwelling units in association with any single detached, semi-detached or rowhouse dwelling unit may introduce significant compatibility and fit issues in existing neighbourhoods, representing inappropriate forms of intensification.
- Permitting “de novo” hearings before the Local Planning Appeal Tribunal, reduces the weight of Council’s decisions on planning matters and allows for new information to be raised at an LPAT hearing that is not heard or considered by Staff, the community or Council through the planning application review process.

- Limiting the inclusionary zoning to identified protected major transit station areas or as part of a development permit system will potentially limit areas where this tool to provide affordable housing may be used.

The Ministry of Municipal Affairs and Housing is receiving comments on Bill 108's proposed changes until June 1, 2019.

# Analysis

## 1.0 Background

The Minister of Municipal Affairs and Housing introduced Bill 108, *More Homes, More Choice Act, 2019* on May 2, 2019. The Bill proposes a number of amendments to 13 different statutes including the *Planning Act,* the *Local Planning Approval Tribunal Act,* and the *Development Charges Act.* Bill 108 proposes to repeal many of the amendments that were introduced in 2017 through Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017.*

The intention of Bill 108 is to address the housing crisis in Ontario by minimizing regulations related to residential development through charges to various Acts related to the planning process, including reducing fees related to development by reducing the number of services that may be subject to development charges and shortening the timelines for the approval of many planning applications. Bill 108 passed the First Reading stage on May 2, 2019 and has been debated at the Second Reading stage on May 8, 9, 13, and 14 2019.

This report is an overview of Bill 108, including a description of the range of the proposed amendments related to planning and development including:

- The *Planning Act*
- The *Local Planning Approval Tribunal Act*
- The *Ontario Heritage Act*
- The *Development Charges Act*
- The *Conservation Authorities Act*
- The *Environmental Assessment Act*
- The *Endangered Species Act*

This report will be forwarded to the province, together with a summary cover letter, to express Council's concerns with Bill 108, while it is open for input through the EBR process.

## 2.0 Proposed Changes, Considerations and Concerns

### 2.1 Significantly Reduced Timelines for Council Decisions on Planning Matters (including planning applications)

Bill 108 proposes significant reductions in timelines for a variety of planning application types. This will reduce Council's opportunity to engage the public in such applications and may also lead to more appeals to the LPAT, based on a non-decision within the prescribed timeline, moving the decision-making on such applications to the LPAT rather than at the Municipal Council level.

- Zoning Bylaw Amendments: The current timeline is 150 days. Through Bill 108, it would be reduced to 90 days, a reduction of approximately 2 months.

- Official Plan Amendments: The current timeline is 210 days. It is proposed to be lowered to 120 days, a reduction of approximately 3 months.
- Zoning Bylaw Amendments with Official Plan Amendments: The current timeline is 210 days. It is proposed to be reduced to 120 days, a reduction of approximately 3 months.
- Subdivisions: The current timeline is 180 days. It is proposed to be reduced to 120 days, a reduction of approximately 2 months.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 17, 22, 24 | Timeline for official plans and amendments reduced to 120 days. | Reduced timelines can compress or streamline the review of applications and make decisions based on limited information. Compressed timelines also limit opportunities for public consultation. | Retain the current timelines for decisions to encourage a more open and consultative decision process. |
| S. 34, 36 | Timeline for zoning by-laws and amendments reduced to 90 days. | | |
| S. 51 | Timeline for plans of subdivision reduced to 120 days. | | |

### 2.2 Major Changes to the Recently Created LPAT (Local Planning Appeals Tribunal)

Bill 108 proposes significant amendments to the practice and procedure of the Local Planning Appeal Tribunal (LPAT) set out in Part VI of the LPAT Act. Recent changes meant that Council's decisions carried more weight and appeals to such decisions were limited to arguments relating to non-conformity with the City's Official Plan or non-conformity with the Provincial Policy Statement. This opens Council's decisions on planning matters up to a much wider range of appeals. It also opens the door to new evidence being submitted at LPAT hearings that wasn't considered at the Council decision stage. This raises concerns that applicants may hold back information through the planning process, only to raise such information at the LPAT hearing stage, when the public and Council are no longer involved.

- Replacement of a two-step appeal process with a single ("de novo") hearing where the Tribunal would have the power to make final determinations on appeals;
- Hearings are to be "de novo". New information not reviewed by Council as part of its decision on a planning matter may be presented at the Tribunal
- Third party appeals on non-decisions that are now open to anyone who provides written or oral submissions through the planning process will be restricted.
- Tests in deciding whether an appeal should be heard will no longer be limited to non-conformity to the Provincial Policy Statement and the City's Official Plan.
- New power for the Tribunal to require mediation or other dispute resolution processes by parties in specific circumstances;
- New ability for the Tribunal to limit any examination or cross-examination of witnesses and consider new evidence at hearings;
- Limitation of submissions by non-parties to a proceeding before the Tribunal to written submissions only;

New subsection 43.1 sets out transitional regulations respecting Planning Act appeals.

Bill 108 also proposes significant amendments to the Tribunal's powers prescribed in the *Planning Act* to:

- Broaden the jurisdiction of the Tribunal over planning matters (e.g. official plans, zoning by-laws and amendments) and authorize the Tribunal to make final determinations on appeals of such matters;

- Provide the Tribunal with authority to dismiss all or part of an appeal without hearings;
- Limit the right of third party to appeal approval authority decisions of plans subdivision and non-decisions of official plans and amendments

| Section | Proposed changes | Concerns or issues | Recommendations |
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| **OPA:**<br>S. 17 (45), S. 34 (25), (26),<br>S. 51 (53)<br><br>**OHA:**<br>S. 29 (15) - (17) | Two-step appeal process is replaced by a single hearing. LPAT has a new power to make final determinations on planning matters (or designation of heritage properties), without having to send decisions back to municipal councils for a second decision. | The LPAT will override municipal decisions regardless of Council's position on the development file.<br>- weakens municipal decision-making authority. | Retain the current two-step appeal process so municipalities maintain their powers to make final decisions. |
| S. 38-42 (repealed) | The LPAT is no longer bound to consider appeals based on consistency with provincial plans and policy and conformity with official plans. | LPAT decisions could fail to achieve the goals of provincial or official plans. | Retain the current grounds for appeals to ensure that applications/appeals are consistent with provincial plans and conform to official plans. |
| S. 17 (40),<br>S. 51 (39), (43), (48.3) | Any person or public body can no longer appeal decisions made by an approval authority for plans of subdivision and non-decisions for official plan amendment applications.<br>Certain public bodies can appeal decisions. | Removes the right of certain persons to appeal a decision of the Tribunal. | Retain the right of appeal for those who participate in the planning approval process. |

### 2.3 Major Restrictions on Application of Inclusionary Zoning

Bill 108 proposes that inclusionary zoning would be permitted in only two specified areas:

- protected major transit station areas; and

- areas that are subject to a development permit system, established by an order of the Minister of Municipal Affairs and Housing in accordance with amended subsection 70.2.2 (1).

This represents a major step "backwards" from the current legislation, and significantly restricts municipality's ability to apply inclusionary zoning to increase the supply of affordable housing.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 16 (5) | Inclusionary zoning would be limited to areas around protected | Inclusionary zoning provisions can only be | Extend applicable areas to permit the use of inclusionary zoning in |

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| | major transit station and development permit system areas. | utilized in limited situations. | other areas of the municipality where a development permit system is not in place. |

### 2.4 Secondary Dwelling Units

A secondary dwelling unit is currently permitted in any single detached house, semi-detached house or rowhouse **OR** in a building ancillary to any single detached house, semi-detached or row house. Through Bill 108 a secondary dwelling unit would be permitted in any single detached house, semi-detached house, or rowhouse **AND** in an ancillary building. This would allow for two permitted secondary dwelling units. Bill 108 proposes to make it easier to provide additional units in a house. This could permit up to 2 secondary dwelling units in addition to the primary unit.

Allowing for two secondary dwelling units for any residential unit (single, semi or row) as-of-right, without any zoning amendment application process, could introduce a variety of planning compatibility and fit issues in existing neighbourhoods, without a process to evaluate appropriateness within a given context .

### 2.5 The *Ontario Heritage Act*

Proposed amendments to the *Ontario Heritage Act* are to:

- Establish “prescribed principles” that shall be considered by municipalities when making decisions under Part IV or V of the Act;
- Provide for new timeframes for notices and decisions that are open-ended under the current Act. These timeframes include:
    - 60 day timeline to notifying property owners of whether their applications for alteration and demolition are complete;
    - 90 day timeline for municipalities to issue a notice of intention to designate a property as having cultural heritage value or interest, when certain events as prescribed by regulation have occurred; and
    - 120 day timeline for passing a designation by-law after the municipality issues the notice of intention to designate;
- Provide for notice to property owners when a property is included in a heritage register;
- Enable property owners to object to the inclusion of a property in a heritage register, considered by municipalities or council;
- Allow appeals of municipal decisions on designation and alterations to heritage properties to LPAT for a binding decision instead of a non-binding recommendation made by the Conservation Review Board;
- Deem applications for alteration or demolition to be approved if a municipality fails to make a decision within the specific time period

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 26.0.1, S. 39.1.2 | Introduction of “prescribed principles” | “Prescribed principles” are unclearly provided. | Clearer introduction of “prescribed principles” is needed. |
| S. 27 (7) | Notice requirements to property owners with appeal rights to municipal councils | No time limit by which a property owner must appeal or basis of appeal is not set out. | If the process is amended as proposed in Bill 108, a timeline should be included. |
| S. 27 (9) | Restriction on demolition, requiring 60 days’ notice in writing of the owner’s intention to demolish or remove the building. | Does not include provisions by which a property owner may withdraw their notice of intent to demolish | Provide opportunity for landowner to withdraw their notice of intent to demolish. |

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| | | pursuant to subsection 27 (9). | |
| S. 29 (11) - (18) | Designations can be appealed to LPAT, who are empowered to overrule municipal decisions. | LPAT has no heritage knowledge or expertise to adjudicate cultural heritage matters including designations. | Decisions should be considered by heritage experts, such as the Conservation Review Board.<br>Increased ability of the board or municipal council to make decisions.<br>A “two-step” appeal process should be introduced. The appeal may go first to municipal council and then to LPAT. |
| S. 29 (8) 1 | New timeframes for notices and decisions are set out:<br>60 days for notifying property owners of their complete applications;<br>90 days for issuing a notice of intention to designate a property as having cultural heritage value; and<br>120 days for passing a designation by-law after the notice of intention was published. | Short timelines can compress a decision approval process and fail to provide greater certainty about decisions (or intention of designation) as well as about a designation by-law. | Retain current timelines. |
| S. 29 (1.2) | Limitation of municipal council’s ability to issue its notice of intent to designate a property under Part IV after 90 days from a “prescribed event” | “Prescribed event” is not clearly defined.<br>The time extent of beyond after 90 days have elapsed from a prescribed event is unclear.<br>The limitation could result in the loss of cultural heritage resources. | Repeal subsection 29 (1.2) to revise the ability of a municipal council on designating a property as having cultural heritage value. |

**2.6 The Environmental Assessment Act**

Proposed amendments to the Environmental Assessment Act include:

- The allowance of exemptions of certain types of lower-impact infrastructure improvements that fall under Class EAs. Exemptions include some municipal projects, such as streetscape improvements.
- Changes to amending an approved class EA. The Minister may only amend an approved class EA if the public is given notice and comment, if the Minister gives written reasons, and if the amendment is consistent with the purpose of the act and public interest.
- A reduction of the ability for the Minister to order a proponent to comply with Part II of the Act or impose additional conditions. A Minister can only carry out the above to mitigate impacts on existing Aboriginal treaty rights, or if a matter is prescribed as one of provincial importance.

### 2.7 Development Permit System

The proposed amendments to the development permit system would authorize municipalities to adopt or establish a development permit system that applies to a specified area or to an area surrounding and including a specified location.

### 2.8 The Conservation Authorities Act

Proposed amendments to the *Conservation Authorities Act* include:

- A description of a Conservation Authority's primary and mandatory services, which are meant to pertain primarily to natural hazard protection, conservation of lands controlled by the Authority, water source protection under the *Clean Water Act, 2006,* other duties that will be prescribed by later regulations
- A new subsection stating that Conservation Authorities can provide municipal programs and services only through an agreement with a municipality.
- A new requirement for Conservation Authorities to enter into a memorandum of understanding with municipalities, thereby standardizing their power in municipal planning. It must be reviewed periodically.

### 2.9 The Endangered Species Act

Bill 108 proposed amendments to the *Endangered Species Act* to:

- Extend the timeframe for regulation response to 12 months after receiving a report from COSSARO classifying the species. Authorize an additional 12 month regulation response delay should the Minister recommend that COSSARO reconsider the initial classification.
- Authorize additional increased delays of up to three years for newly listed Endangered and Threatened species protections to come into force.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 7.4, 8.3, 8.4 | Extending the existing three month response timeframe to 12 months in additional to a Minister reconsideration request, extending response a further 12 months. | Species listing consideration timeframes extending from 3 to 24 months.<br><br>Delaying listing postpones species and habitat protection, endangering finite species populations. | The current three month response regulation limits delays to species protections and provides the government with review and consideration time.<br><br>Increased funding to implement the existing Endangered Species Act (ESA) will limit permitting and response delays. |
| S. 8.1 | When a species is listed as Endangered or Threatened for the first time, the Minister may suspend all or some of the prohibitions in subsection 9.1 and 10.1 for up to three years. | A potential five year delay from the first recommendation of Committee on the Status of Species at Risk in Ontario (COSSARO) will further undermine species and habitat protection in Ontario. | The current ESA provides permitting options for developers to contravene S.9 and S.10 of the ESA.<br><br>Delaying protections recommended by COSSARO scientists puts sensitive species at risk. |

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| | | It is not clear how changing taxonomic groups will be impacted by these changes. | |
| S. 8.2 | During the first year that a species is listed on the SARO List, exclusion permits are available for proponents to proceed with activities previously permitted before the listing, suspending prohibitions for up to three years. | It is not clear if this three year delay is in addition to the three year delay offered in S 8.1. | Immediate protection of species added to the Species at Risk in Ontario (SARO) List is in the best interest of maintaining sensitive species populations.<br><br>Delaying protections recommended by COSSARO scientists puts these species and habitats at risk. |
| S. 9.1.2 to 9.1.4 | New subsections would allow the Minister to regulate the application of the ESA, by means of geography or developmental stage. | Current Endangered and Threatened status applies to all listed species at all life stages across the entire province. This proposed change has implications to ecological life cycles and politically driven ESA regulation rather than science driven regulation (e.g., the Spiny Softshell Turtle could have protection reduced to breeding adults, undermining population cycles). | Protection of species added to the SARO List at all life stages and in all geographic locations supports species populations over time.<br><br>The proposed changes could undermine Species at Risk (SAR) recovery efforts within the City of London, particularly with regard to developmental stage protection limitations. |
| S. 16.1 | The proposed Section 16.1 allows the Minister to engage in landscape agreements which allow activities to harm one or more SAR species, provided that the proponent executes 'beneficial actions' which assist in the recovery or protection of one or more SAR species. | Species identified for recovery or protection are not required to be the same as those that will be harmed by the proposed activities.<br><br>Flexibility to provide landscape level conservation.<br><br>Potential exists to destroy species of higher listing status in exchange for conservation measures of species with lower listing status.<br><br>Geographic divisions are concerning given the importance of genetic communities of species at the limits of their range for maintaining genetic | The City of London supports landscape level conservation efforts that currently exist within the ESA.<br><br>The proposed changes could undermine SAR recovery efforts within the City, trading the benefit of one SAR species for another. |

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| | | diversity and promoting species persistence. | |
| S. 18 | Section 18 is re-enacted to provide that the person authorized to engage in the regulated activity may carry out the activity, despite section 9 or 10, provided certain conditions are met to allow activities that are regulated under other Ontario legislation or under federal legislation to proceed. | Providing further exemptions for provincially and federally regulated activities is concerning as these activities already receive exemptions through permitting and 2013 changes to the ESA. | The City of London supports the protection of species added to the SARO List regardless of the regulating authority for the activities which may pose harm to them. |
| S. 20.1-20.18 | New Sections 20.1 to 20.18 establish a SAR Conservation Fund and an associated Agency to Manage the Fund. Payments will be obtained through the Act as a condition of a permit to proceed with activities that would be prohibited under Section 9 of 10. | This could be interpreted as permitting 'Pay to Destroy'<br><br>It is unclear if the program intends to result in 'no net loss' or 'net gain'.<br><br>It is unclear if the outcomes required will be the same duration/magnitude as the negative impacts.<br><br>It is unclear if developers will be required to avoid and minimize impacts before proceeding with payment-in-lieu.<br><br>It is unclear if the fund will be used for on-the-ground activities that benefit SAR and their habitats, or if funding studies and research be sufficient.<br><br>It is unclear if the fund will be directed by scientists or politicians. | Suitable species habitat conditions can be extremely complex and rarely fully understood, such that restoration and replication efforts are not preferred to maintaining existing habitat. |
| S. 27.1 | The new section proposes to provide the Minister with the power to stop an activity that is harming a species on the SARO List (END or THR only) if the prohibitions in | The threshold required for the Minister to stop work is described as 'Significant adverse effect' on a species. This term is not defined.<br><br>The Minister may order the suspension of an | Conservation efforts could be assisted by this change, as it provides the Minister with greater power to stop work on activities damaging to SAR species. |

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| | sections 9 and 10 do not apply and the species is being negatively impacted by the activities. | activity based on COSSARO reports that have not yet come into force. | This change is not necessary should the other changes proposed in Bill 108 not proceed, as sections 9 and 10 afford protection to species in the absence of Minister intervention. |
| S. 55, 56 and 57 | Re-enacted regulation powers for the Lieutenant-Governor and Minister of the MECP, providing blanket authority to make exemptions or prescribe conditions to most areas of the ESA including limiting geographic areas, timing windows, requiring species conservation charges for a conservation fund species, requiring monitoring of effects to a specified species and taking steps to minimize the effects of the activity onto a given species. | Provides a political basis to undermine species protections. | Conservation efforts based on science and in support of preserving SAR species are preferred to politically driven regulation exemptions. |

### 2.10 Major Changes to the Development Charges Act – Restricting What Growth Costs Can be Recovered Through a Development Charges By-law

Bill 108 proposes significant amendments to the *Development Charges Act.* Certain formerly eligible development charge rate components are proposed to be incorporated in a community benefits charge by-law under the *Planning Act* changes. These amendments to the *Development Charge Act* are proposed to:

- Further exempt secondary units in new residential developments from development charges (exempt both a secondary dwelling unit located in a house and a secondary dwelling unit located in an ancillary structure);
- Eliminate the current 10 percent reduction on capital costs for waste diversion services when determining development charges;
- Eliminate “soft services” (e.g. libraries, park and recreation, affordable housing, etc.) from development charge determination because they will be included in the new Community Benefit Charge under new section 37 of the *Planning Act*;
- Make upfront development costs more predictable by determining the amount of development charges on the date of submission of a site plan or zoning application;
- Allow municipalities to charge interest from when the development charge is determined to when a building permit is issued, with the interest rate determined by regulation;
- Allow for the payment for development charges in 6 annual instalments when occupancy takes effect for certain types of developments:
    - Rental housing;

  - Institutional;
  - Industrial;
  - Commercial; and
  - Non-profit housing;
- Freeze development charge rates applied to developments at the rate in force when an application is made for site plan or zoning approval.

New subsection 9.1 introduces transitional matters relating to community benefits under the *Planning Act,* and new subsections 51. (3.1) and (3.2) are added to set out rules for non-parties to front-ending agreements.

- Development charges for industrial, institutional and commercial construction and rental and non-profit housing would be permitted to be paid in equal installments over a period of up to 6 years.
- Development charge rates would be "frozen" at an earlier time of the process. For example, not at the building permit stage but at the site plan or zoning by-law amendment application stage.
- Second units would be further exempt from development charges.
- Soft services, such as libraries, parks, affordable housing, etc., will no longer be eligible. Development charges will be limited to:
  - Water supply services, including treatment and distribution
  - Waste water services, including sewers and treatment
  - Storm water management and drainage
  - Services related to a highway as defined in the Municipal Act *(highway" means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway)*
  - Electrical power services
  - Police
  - Fire protection
  - Transit
  - Waste diversion
- Community benefit charges would replace both parkland development (infrastructure) Development Charges and parkland dedication requirements of the *Planning Act* (land).
- Community benefit charges could be applied to Zoning Bylaw Amendments, minor variances, consents, subdivisions, and building permits.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S.9.1 | Transitional provisions related to proposed ineligible services and the introduction of a Community Benefits Charge By-law. | Transitional timelines are presently unclear. | More information is requested on the transition from DC By-laws under the current DC framework. A reasonable transition period is requested to ensure changes can be made to continue to recover for growth costs and avoid confusion to development proponents. |
| S. 2 (4) | Development charges may only be imposed for 10 identified services. | May reduce the ability of the municipality to recover for growth infrastructure costs and the principle that "growth pays for | "Soft "services now eligible as part of a community benefits charge, however, these charges are to be related to the value of |

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| | | growth". "Soft" services such as libraries, parkland development, affordable housing, etc. not identified as being eligible as development charges. | the land subject to an application, and will be capped. |
| S. 26.1 | Development charges are payable in equal installments for up to 5 years when a building is occupied. | May create cash flow constraints for the delivery of infrastructure within currently identified timelines, and require additional debt issuance. | Omit commercial development from the eligible types of development that may avail of deferred payments. Industrial and institutional development is generally a "base employer" that brings new jobs into a community, whereas commercial development is generally a "population-base employer" responding to growth in other sectors. |
| S. 26.2 (5) | Introduces elapsed time period for DC rate determination for site plans or zoning. | No specific time limit is prescribed. | "Prescribed amount of time" should be specified. |

### 2.11 Removal of Bonus Zoning From the Planning Act and Establishment of a New Community Benefits Charge

Under Bill 108, the current Section 37 density bonusing provisions, where a municipality may authorize increases in height and density of development beyond what is permitted in a zoning by-law in return for community benefits (that is, facilities, services, or matters prescribed in the by-law), would no longer be permitted.

The proposed new Section 37 in Bill 108 replaces bonusing in its entirety with a new community benefits charge authority to allow municipalities to impose community benefit charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which a community benefits charge by-law applies. It is important to understand that such community benefit is simply a charge, and would not relate to planning permissions for greater height and density, as is currently the case in Section 37 of the Planning Act (Bonusing)

A community benefits charge would apply to an approval of any of the following:
- Zoning by-law or zoning by-law amendment
- Minor variance
- Conveyance of land
- Plans of subdivision and consents
- Condominium plans
- Building permit

The new section 37 provides:

- Municipalities are required to prepare and pass a community benefit charge by-law and a strategy identifying facilities, services and matters to be funded with community benefits charge;
- A new process governs municipalities' collection of community benefits charges in a special account and their use of the funds, including a mandatory requirement that a municipality spend or allocate at least 60% of the funds in a year;
- A process enabling owners to object to the value of community benefits charges applied to their land.
- Developers or land owner may provide in-kind contributions to municipality facilities, services or matters instead of payment;
- The amount of community benefit charges will be capped at a yet to be specified percentage of land value of any development sites.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 37 | Current density bonusing provision will be replaced with new community benefits charge provisions. | - No conditions that would allow Council to consider an increase density or height in returns for certain public facilities or matters.<br>- Fewer community benefits will be provided. | - The maintenance of density bonusing provisions would allow greater community benefits, including parkland development.<br>- Introduction of community benefit charge provisions should not replace the ability of a municipality to provide an increase in height or density in exchange for public facilities or matters. |
| | A municipality must have only one community benefits charge by-law. | One community benefits charge by-law may not be appropriate for all areas within a municipality because of different needs for different community benefits for local areas. Also, there may be different impacts arising from different developments. | Allow a municipality to establish a community benefit charge by-law for the entire city or for specific areas, depending on the local community needs arising from the impacts of the development. |
| S. 37 (4) | Certain development or redevelopment is not subject to community benefit charges. | Certain types of development that will be exempted from community benefit charge are not clearly specified. | Clarify and confirm the types of development that would not be subject to community benefit charge. |
| S. 37 (5) 2 | Some facilities, services or matters are not subject to community benefit charges. | Certain facilities, services or matters that will be exempted from the community benefit charges are not identified. | Allow municipalities the flexibility to identify or specify facilities, services or matters to address growth servicing needs that will be subject to community benefit |

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| | | | charges (without duplication of those services prescribed in the *Development Charges Act*). |
| S. 37 (6) | Landowners are permitted to provide in-kind contributions. | No authority is proposed to enter into agreements binding on the owners | Introduce a new authority to establish agreements with owners for in-kind contributions. |
| S. 37 (9) | The introduction of community benefit charge strategy. | The requirements of the community benefit strategy are not identified, including timelines for by-law adoption and expiration similar to those identified in the *Development Charges Act*. | Requirements for the strategy should be clearly identified to ensure that municipalities are able to maximize the community benefit arising from the proposed development, and remains current to the forecasted needs associated with growth. |
| S. 37 (12) | The amount of community benefits charge is required not to exceed an amount equal to the prescribed percentage of the value of the land. | "Prescribed percentage" of the value of the land is not specified. | Prescribed percentage may not cover the full costs of the anticipated community benefits arising from the impacts of a development. Costs should be based on a study of local needs and the anticipated amount of the community benefit required to address the needs arising from growth. |
| S. 37 (27) | Under new community benefit charge by-law, municipalities are required to spend or allocate 60% of fund each year. | Does not allow the opportunity to establish reserve funds for large projects or developments. | New regulation for more transparent and efficient use or allocation of the funds should be added, including the recognition of funding required to pay for growth infrastructure that straddles a calendar year or is a multi-year project.. |

### 2.12 Parkland Dedication in Accordance with New Section 37 Community Benefits Charges

The introduction of the new Section 37 replaces parkland dedication in some cases. If a community benefits charge by-law is in force, parkland dedication requirements are no longer of effect. The amendments to parkland dedication provisions provide that:

- Municipalities are no longer able to require an alternative rate for parkland;
- Plans of subdivision that are approved with a condition of parkland conveyance are not subject to a community benefits charge by-law

Many amendments to subsection 51.1 of the *Planning Act* are also proposed to set out parkland conditions that may be applied to the approval of plan of subdivision in accordance with new section 37 of the Act.

| Section | Proposed changes | Concerns or issues | Recommendations |
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| S. 42 | Parkland by-law is no longer in effect once a community benefit charge by-law has been passed. | Less parkland or funding to secure parkland will be provided from developers. | The provision of parkland should not be subject to the community benefit charge provisions. Parkland dedication (not parkland development) provisions of the Planning Act should be maintained. |
| S. 51.1 | Plans of subdivision that are approved with a condition of parkland are not subject to a community benefits charge by-law. | By exercising the current authority to take parkland as a condition of approval for a plan of subdivision, a community benefit charge may not be applied. | Maintain current section 51.1 to allow municipalities to secure parkland dedication as a condition of development for plans of subdivision. |

## 5.0 Conclusion

Bill 108, More Houses, More Choices Act, 2019, proposes significant changes to much of the legislation that applies to planning and development in Ontario. Significant changes that will have an impact in London include:

- Decreasing the timelines for the consideration of planning applications will limit the opportunity to consult with the public, contrary to recent efforts by the City to enhance opportunities for public consultation and engagement.
- Changes to the Development Charges Act that would limit the municipal services eligible for funding through development charges, potentially shifting away from the principle that “growth pays for growth”.
- Limitations on parkland dedication when a community benefits charge by-law is adopted.
- Replacing Section 37 of the Planning Act that permits bonusing with a new Section 37 that would allow the establishment of a community benefits charge to fund the provision of “soft services” such as libraries, affordable housing and parkland.
- Permitting up to two secondary dwelling units in association with any single detached, semi-detached or rowhouse dwelling.
- Permitting “de novo” hearings before the Local Planning Appeal Tribunal that would allow the consideration of material not reviewed by municipal Council
- Limiting inclusionary zoning to identified protected major transit station areas or as part of a development permit system.

It is recommended that the comments in this report be provided to the Province to meet the 30 day commenting period that ends on June 1, 2019, and that the City also request that the Province consider:

- Extend the current 30 day commenting period to allow additional time for consultation prior to the adoption of the proposed legislative changes
- Provide additional opportunities for consultation with municipalities prior to any new regulations coming into force and effect.
- Provide a transition time to the new development charge system that would recognize current or newly adopted development charge by-laws.

| | |
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| Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from City Planning. | |

May 17, 2019

## Appendix A – Proposed Changes to the *Planning Act*