

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: Gregg Barrett
Director, City Planning and City Planner

Subject: Bill 108, the *More Homes, More Choice Act, 2019*, and Bill 197, the *COVID-19 Economic Recovery Act, 2020*, Information Report

Meeting on: October 19, 2020

Recommendation

That, on the recommendation of the Director, City Planning and City Planner, the attached report with respect to Bill 197 **BE RECEIVED** for information.

Executive Summary

The Province introduced Bill 108, the *More Homes, More Choice Act, 2019* on May 2, 2019 to address Ontario's housing crisis and passed this Bill on June 6, 2019. Many of the key amendments to the *Development Charges Act* and the *Planning Act* proposed in Bill 108 did not come into force and effect when the Bill was introduced.

The Province released regulatory proposals and additional changes to the *Development Charges Act* and the *Planning Act*, which included a new Community Benefits Charge (CBC) authority, and transition provisions for public consultations in June 2019. Subsequent to that, Bill 138, the *Plan to Build Ontario Together Act, 2019*, was introduced with a mechanism to appeal a Community Benefits Charge by-law and transitional provisions with respect to alternative parkland rates on November 6, 2019. On February 28, 2020, the Province released another regulatory proposal for public input on additional components of the CBC authority.

In response to these consultations, the Province introduced Bill 197, the *COVID-19 Economic Recovery Act, 2020*, on July 8, 2020. This Bill also included further changes to portions of Bill 108 that were not in force. The significant amendments to the *Development Charges Act* and the *Planning Act* introduced in Bill 197 include:

- Services eligible to be 100% recovered through development charges (DCs) are expanded.
- Sections 37 and 37.1 passed in Bill 108 are replaced with new Sections 37 and 37.1 that set out the relationship between the Community Benefits Charges and DCs that can be imposed under the *Development Charges Act* or funded from dedicated parkland funds.
- Limited CBCs so that they may only apply to higher density residential developments with at least five storeys and 10 units.
- Confirmed that CBC by-laws and parkland dedication by-laws can be appealed to the Local Planning Appeal Tribunal (LPAT).
- Restored the existing parkland dedication provisions, including standard parkland dedication and alternative rates, are maintained with new provisions with respect to refunds after a successful appeal.
- Expanded Minister's zoning orders to allow for inclusionary zoning and site plan control on "specified land" (i.e. non-greenbelt land), without public consultation or the right of appeals.

Bill 197 received Royal Assent on July 21, 2020. On September 18, 2020, the Province filed a new regulation under the *Planning Act* which provides for additional details with respect to the CBC authority and parkland dedication, and proclaimed Bill 197, any remaining unproclaimed portions of Bill 108, and the new regulation into force.

Analysis

1.0 Pertinent Reports

- Planning and Environment Committee, May 27, 2019, Bill 108 – More Homes, More Choice Act, 2019
- Planning and Environment Committee, July 22, 2019, Information Report – Proposed Regulations for Bill 108 – More Homes, More Choice Act
- Corporate Services Committee, March 9, 2020, Development Charges Housekeeping Matters Related to Bill 108

2.0 Background

2.1 Bill 108

The Province introduced Bill 108, the *More Homes, More Choice Act, 2019* on May 2, 2019 to address housing supply and improve housing affordability in Ontario. A number of key amendments to the *Development Charges Act* and the *Planning Act* include:

- Replacing the existing Section 37 (density bonusing) with a new section 37 that introduces a Community Benefits Charge (CBC) authority;
- Changed requirements for Secondary Dwelling Units to instead require policies that authorize Additional Residential Units;
- Limiting development charges (DCs) that would be recoverable to hard services, such as water and wastewater services, and waste diversion and ambulance services;
- Allowing for the payment for DCs in six installments when occupancy takes effect for certain types of developments;
- Limitations on parkland dedication when a CBC by-law is adopted, including the removal of the provisions authorizing an alternative rate;
- Reducing timelines for council decisions on planning applications;
- Replacing a two-step appeal process with a “de novo” hearing where Tribunal would have the power to make final determinations on appeals, which is similar to the Ontario Municipal Board (OMB) rules that were changed in 2017; and
- Limiting inclusionary zoning to protected major transit station areas or areas where a Community Planning Permit System is in place.

Bill 108 received Royal Assent on June 6, 2019, however, many of these proposed changes to the *Development Charges Act* and the *Planning Act* did not come into force and effect. Rather, public consultations on proposed regulations required to implement the proposed Bill 108 changes were initiated by the Province.

2.2 Regulatory proposals with respect to Bill 108

On June 21, 2019, shortly after the introduction of Bill 108, the Province released the following regulatory proposals through the Environmental Registry of Ontario and Ontario’s Regulatory Registry for public feedback:

- Proposed new regulation and regulation changes under the *Planning Act*, including transition matters of Bill 108 – the *More Homes, More Choice Act, 2019* (ERO 019-0181)

- Proposed new regulation pertaining to the community benefits authority under the Planning Act (ERO 019-0183)
- Proposed changes to O. Reg. 82/98 under the Development Charges Act of Bill 108 – More Homes, More Choice Act, 2019 (ERO 019-0184)
- Proposed regulations under the Local Planning Appeal Tribunal Act, 2017 (19-MAG007)

An information report with a summary of proposed changes was presented to the Planning and Environment Committee on July 22, 2019. Staff submitted the report to the Ministry of Municipal Affairs and Housing as a response to the proposals in August 2019.

On November 6, 2019, amendments to the CBC and parkland dedication provisions under the *Planning Act* were introduced through Bill 138, the *Plan to Build Ontario Together Act, 2019*. The amendments included a mechanism to appeal a CBC by-law to the Local Planning Appeal Tribunal (LPAT) and the removal of industrial and commercial developments from the types of development that would be subject to development charge deferral, as was originally proposed under Bill 108. Bill 138 also introduced new transitional provisions to Sections 42 and 51.1 related to parking acquisition of the *Planning Act*, to preserve the alternate parkland rates during the transition period.

Following Bill 138 receiving Royal Assent on December 10, 2019, some portions of Bill 108 related to the *Development Charges Act* were proclaimed on January 1, 2020. The parts of the Bill that came into force and effect related to changes to when a DC is calculated and the introduction of deferred payment installments for rental housing, non-profit housing and certain types of institutional development. To implement these changes, a report was submitted to Corporate Services Committee on March 9, 2020 that recommended a Development Charge Interest Policy and a Development Charge Alternate Payment Agreement process. Council adopted the recommendations at its March 24, 2020 meeting.

On February 28, 2020, the Province released another regulatory proposal (“Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act”, ERO 019-1406) for public consultation on proposed components of a new Community Benefits Charge authority. This proposal outlines the following matters to inform the further development of the CBC authority and regulation under the *Planning Act*:

- **Required content for a CBC strategy** to set out some requirements, including the anticipated type of development that will be subject to a CBC, the anticipated increase in the need for CBC as a result of development, a parkland, and a parkland per person analysis.
- **Services eligible to be fully recovered through DCs**, including libraries, long-term care, parks development, public health, and recreation.
- **Percentages of land value for determining a maximum CBC** – 15% for single-tier municipalities, including the City of London.
- **One-year transition period** to the new CBC regime after the date the proposed CBC regulation comes into effect.
- **CBC by-law notice provisions** to implement the by-law appeal mechanism established through Bill 138.
- **Minimum interest rate for CBC refunds** where a by-law has been successfully appealed would be the Bank of Canada rate on the date of by-law comes into force.
- **An amendment to the Building Code** to add the CBC authority to the list of items under Division A – Article 1.4.1.3 Definition of Applicable Law.

2.3 Bill 197

Following the consultation period ending on April 20, 2020, the Province introduced a new omnibus bill, Bill 197, the *COVID-19 Economic Recovery Act* on July 8, 2020. This Bill proposes a number of changes to various statutes intended to support the recovery of the Provincial economy from the COVID-19 pandemic, and to further amend the *Planning Act* and the *Development Charges Act*, particularly the changes made through Bill 108.

This Bill received Royal Assent on July 21, 2020 without public consultation. On September 18, 2020, the CBC and parkland provisions, as well as ministerial zoning orders, under the *Planning Act* and changes to the *Development Charges Act* came into force and effect. To implement the Bill 197 changes, a new regulation under the *Planning Act* (ERO 019-0183 and ERO 019-1406 updated) was filed and proclaimed into force on September 18, 2020. The regulation prescribes key details with respect to Community Benefits Charges and parkland dedication that were addressed in the regulatory proposals released on June 21, 2019 and February 28, 2020.

3.0 Bill 197 Changes

3.1 Changes to the *Development Charges Act*

Whereas Bill 108 limited eligible DC services to hard services, waste diversion and ambulance services, Bill 197 reverts the funding of most soft categories back into DCs. The list of eligible services has been expanded to also include public libraries, parks development, recreation (community centres), long-term care, public health, child care, housing services, by-law enforcement and court services, and emergency preparedness. Furthermore, the capital costs of these services are no longer subject to a mandatory 10% discount. The acquisition of land for parks remains an ineligible DC service.

With the reintroduction of public libraries, parks development and recreation into the list of eligible services, all current DC revenues being collected for by the City are maintained.

DC exemptions for additional dwelling units in single-detached house, semi-detached house, or rowhouse, and an ancillary building are also retained. As prescribed in O. Reg. 82/98, one additional unit in any new houses is exempt from DCs. In addition, DCs will not be imposed for the creation of additional units comprising up to 1% of existing units in existing residential rental buildings.

3.2 Changes to the *Planning Act* Community Benefits Charges (CBC)

The new CBC provisions are now in force as of September 18, 2020. In addition, several important aspects of undertaking a CBC came into force as a regulation under the *Planning Act*.

Bill 108 intended for municipalities to fund hard services through DCs and soft services through CBCs. With Bill 197 returning most soft services to the DC regime, the legislation has narrowed the scope of what services and projects may be funded by a CBC and the types of development that a charge can be collected from.

Consistent with Bill 108, Bill 197 states that a CBC can only be imposed to pay for the capital costs of facilities and matters required because of development or redevelopment. Prior to the enactment of a CBC by-law, a municipality must prepare a CBC strategy (similar to a Development Charges Background study) to assess the services and costs to be funded by the charge. Bill 197 provides that CBCs may be imposed for services, including parkland acquisition and those that are eligible DC services, but that the capital costs intended to be funded by the CBC cannot overlap with the capital costs to be funded by parkland cash-in-lieu or DCs. A CBC would not be available for use in areas subject to a community planning permit system (CPPS) that allows conditions requiring the provision of specified community facilities or services. In other words, a municipality would not be able to use two different tools to require the provision of the same specified community service or facility.

A CBC by-law is subject to appeal to the LPAT. To implement the by-law appeal mechanism, the regulation provides for CBC by-law notice requirements that are similar to those for passing a development charges by-law under the *Development Charges Act*. Where there is a successful appeal, municipalities are required to make a refund. The prescribed minimum interest rate for CBC refunds is set to the Bank of Canada rate, which is consistent with the rate that is now in effect for refunds of DCs.

An important change in Bill 197 is that CBCs can only be imposed on residential developments with five or more storeys and more than 10 residential units, and other types of development to be set out in regulation. As such, ground-related housing like single or semi-detached and row-housing are not subject to the payment of CBCs. This will significantly limit the potential revenue that could be collected.

Before passing a CBC by-law, a CBC strategy is required to include the following content prescribed in the regulation:

- The anticipated type, amount and location of development or redevelopment that would be subject to a CBC
- The anticipated increase in the need for a specific community service (e.g. affordable housing, child care, etc.)
- The capital costs associated with the increased need for a specific community service
- The excess capacity that exists in those specific services
- Any capital grants, subsidies, or contributions from other levels of government or other sources like donations

Bill 197 continues to provide that the CBC payable would be capped based on a percentage of land value that determines the maximum CBC. The percentage is 4% of the land value, as prescribed by regulation.

This Bill also maintains the Bill 108 mechanism for an appraisal process for owners to dispute a charge. Under the regulation, the owners have 30 days to provide a municipality with an appraisal of land value while 45 days are given to the municipality to provide the owners with an appraisal where the municipality disputes the value of the land. Where the municipality's appraisal differs by more than 5% from the owner's appraisal, there are 60 days for an appraiser selected by the owner to provide an appraisal.

Bill 108 provisions with respect to reporting on CBC are maintained. Municipalities are required to prepare an annual report to provide information of the amounts in the CBC special accounts, outlined within the regulation. The information includes transactions, opening and closing balances, capital acquired, and details on amounts spent.

Long-term care homes, retirement homes, universities and colleges, memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion, hospices, and non-profit housing are the types of development to be exempt from CBCs in the regulation, consistent with the original proposal under Bill 108.

Density Bonusing

Prior to Bill 108, Section 37 of the *Planning Act* allowed municipalities to authorize increases in height and density of development beyond what is permitted in a zoning by-law in return for community benefits (i.e. facilities, services, or matters prescribed in the by-law).

Bill 108 replaced the bonusing regime in its entirety with the new CBC authority, which allows municipalities to fund for the capital costs of facilities, services and matters required due to development in the area to which a CBC applies. This approach has been carried forward into Bill 197.

Initially under Bill 108, the Province directed that municipalities repeal their bonusing regime on the earlier of the day a CBC by-law is passed or a day to be later prescribed

by the Minister. Through ERO 019-0183, released on June 21, 2019, the prescribed date for transition to the new regime was proposed to be January 1, 2021. This regulation was not approved, however, and a new regulation (ERO 019-1406) was released for comment on February 28, 2020. This regulation directed that municipalities would be required to transition to the new community benefits regime one year after the date that the proposed regulation comes into effect.

Bill 197 has revised these proposed dates and replaced the transition date to two years after the date when Schedule 3 of Bill 197 (changes to the *Development Charges Act*) comes into force which was September 18, 2020. As a result, the City will be required to update its Density Bonusing process no later than September 18, 2022.

Parkland Dedication

Bill 108 removed many of the parkland dedication provisions under Sections 42 and 51.1 of the *Planning Act* to amalgamate parkland dedication into the CBC. The changes eliminated the ability of municipalities to require the conveyance of parkland and to impose an alternative rate.

However, these provisions have been maintained with further amendments to Section 42 through Bill 197, and can be used in conjunction with a CBC for the parkland development. This Bill revised the ability of municipalities to establish an alternative rate of up to one hectare for 300 units for land conveyances or up to one hectare for 500 units for cash-in-lieu. Public consultation is required prior to passing a by-law with alternative rates.

While the by-law can be appealed to the LPAT, this Bill imposed limitations on the powers of the LPAT with respect to the appeals. The LPAT can order an amendment to the by-law, however, cannot amend the by-law to increase the amount of parkland or cash-in-lieu required, or to add, remove or reduce the scope of by-law exemptions. Similar to the CBC provisions, municipalities are required to make a refund after successful appeals.

Existing parkland dedication by-laws will expire two years after these changes come into force. Accordingly, municipalities are required to pass a new by-law with the alternative requirements within the two-year period as of September 18, 2020. The regulation with respect to parkland dedication is now in effect, which provides the minimum interest rate for refunds, by-law notice requirements and reporting provisions that are consistent with those of the CBC authority.

Minister's Zoning Orders

Section 47 in the *Planning Act* provides the Minister of Municipal Affairs and Housing with the authority to issue Minister's zoning orders. Minister's zoning orders control the use of land to protect provincial interests similar to a typical zoning by-law but without a requirement for public notice or consultation, and have rarely been used. However, Bill 197 expanded the powers of the Minister to issue Minister's zoning orders to fast track planning approvals. The Minister are be able to make orders on "specified land", which is land outside of the Greenbelt Area, with respect to site plan control and inclusionary zoning.

The Minister may require a landowner to enter into an agreement with a municipality and provide the parties with a ministerial direction to address site plan matters, such as exterior design of buildings or pedestrian and vehicle access, in the agreement. If the agreement does not comply with the direction, the agreement will then be of no effect.

Minister's zoning orders also enable the Minister to exercise municipal councils' powers to prescribe affordable housing requirements as part of any development. These zoning orders are not subject to appeal to the LPAT and are not subject to the typical requirements for public input.

4.0 Next Steps and Conclusion

On September 18, 2020, the significant amendments to the *Planning Act* and the *Development Charges Act* made by Bill 108 and Bill 197 came into force and effect.

With respect to the Bill 197 *Development Charge Act* changes, all DC services currently in the City's DC By-law remain eligible and budgeted DC revenues being collected for are maintained. Staff will review the broadened list of eligible DC services with applicable service areas to determine which services could be recommended for review as part of the upcoming 2024 Development Charge Background Study process.

As Bill 197 has expanded the services eligible for DCs, the CBC regime has been scoped down. What services and projects can be funded by a CBC has been further restricted and now only a narrow type of development can be charged. Based on the legislative changes, many eligible CBC projects would be identified as part of a DC Background Study process as CBCs can recover for projects that are excluded from DCs. Staff will continue to monitor the evolution of the CBC and report as required.

Through the transition from the current bonusing regime, the current policies in the City's Official Plan and the London Plan will need to be repealed. Staff will also monitor applications to ensure that any bonus agreements proposed through the transition period are finalized before September 18, 2022.

Parkland dedication and alternative parkland rates have been preserved through these legislative changes in Bill 197. A report to the Community and Protected Services Committee was submitted on September 9, 2020 that recommended the Parkland Conveyance and Levy By-law (By-law CP-9) be amended with revised parkland dedication fee rates and come into force on January 1, 2021. Staff will bring forward a new report updating the parkland dedication by-law to incorporate the changes provided under Bill 197.

Acknowledgements

This report has been prepared with input from Kevin Edwards, Manager, Development Finance and Bruce Page, Senior Planner, Parks Planning & Design.

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<p>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 Planning Services</p>	

October 9, 2020
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